ON

THE COLLECTION AND RECOVERY

OF

RENT-CHARGE.

LONDON:
GILBERT & RIVINGTON, PRINTERS,
ST. JOHN'S SQUARE.

ON THE

COLLECTION AND RECOVERY

OF

RENT-CHARGE,

UNDER THE STATUTES FOR THE COMMUTATION OF TITHES IN ENGLAND AND WALES;

WITH

FORMS OF PROCEEDINGS

BY DISTRESS AND ENTRY.

BY

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SOLICITOR.

SECOND EDITION,

REVISED AND CORRECTED, WITH THE ADDITIONS MADE BY THE LAST TWO STATUTES FOR THE AMENDMENT OF THE TITHE ACTS.

LONDON:

FRANCIS & JOHN RIVINGTON,

ST. PAUL'S CHURCH YARD, AND WATERLOO PLACE.

1849.

PREFACE.

THE following Treatise being intended for the use of Clergymen and others, owners of Tithe-Commutation Rent-Charge, in the collection of that branch of their revenue, has been compiled with the view of showing, in a consolidated form, the legal responsibilities to the Charge, and the means of enforcing its payment.

The Commutation of Tithes in England and Wales under the recent statutes, having been in progress several years, the course of proceeding in commuting the tithes of a parish, as founded on the statutes and the directions of the Tithe Commissioners, is conducted on rules and principles well known and understood by those who have been engaged in effecting such Commutations; and the Acts of Parliament, and the Report and Regulations of the Commissioners, afford a practical code for that object.

But when the Rent-Charge has been fixed, and its amount apportioned amongst the lands liable to the payment, the owner of the Rent-Charge is left, for the recovery of it, to the remedies pointed out by the statute :—by distress, if there is a sufficient one; or, if there is no sufficient distress, by summary proceedings in the superior courts of common law at Westminster, to obtain possession of the land. Over these proceedings the Tithe Commissioners have no jurisdiction, and their regulations do not extend to them; but they are conducted by the owner of the Rent-Charge on his own responsibility. It is obviously important that such remedies should be clearly defined and understood, in order to protect the owner of the Rent-Charge from the consequences of any irregularity in the conduct of them.

The present Treatise is therefore designed to facilitate the collection of the Rent-Charge under the Tithe-Commutation Acts, after its amount has been finally ascertained, and duly apportioned amongst the lands of the parish.

As the lessee of the Tithe-Commutation Rent-Charge, of a large metropolitan parish, where there was considerable opposition to the payment, and where it became necessary to enforce the liability in

several hundred cases, I had occasion to put in force the remedies provided by the Acts, as well by distress, as by recovering possession; and applications having frequently been made to me, in consequence of my own measures, for information as to the course of proceeding in such cases, I was induced to publish the former edition of the present work.

A very large number of Tithe-Commutation Acts having been sold, they must be possessed by most persons interested in this kind of property; the Acts, therefore, have only been referred to generally in the following pages, except where the clauses apply to the immediate object of the treatise. To have introduced the statutes verbatim, or on an extended scale, would have increased the size of the publication, without any adequate benefit, since persons not possessing the statutes may obtain them separately.

In a case like the present, where much is necessarily obtained from my own practice only, (in the absence of decisions, or other better materials,) I am aware that what I have, in some cases, suggested as my own opinion, may, when the points come to be better considered, be held otherwise. I am also aware that the law of distress in general is not so satisfactorily stated as may be wished;

indeed I should have been glad to have avoided the introduction of this subject, and to have referred the reader to other publications, in which the law of distress is ably treated of; but when I considered that such treatises were contained mostly in works embracing the whole law of landlord and tenant, and therefore forming volumes of inconvenient size for the pocket, and also that the law of distress, as contained in them, comprised matters not applying to the Rent-Charge, it appeared to me that the present work would have been incomplete without this branch of it. Its introduction may be useful for reference, not only when other works are not at command, but also as containing the law, so far as it applies to the Rent-Charge, divested of irrelevant matter.

Under the heading of impounding the distress, I have set out the statutes with reference thereto, both consecutively and fully, including the recitals. This course I do not observe in other works, except in appendixes to them; and I think that the importance of conducting a distress with regularity, and the recitals showing the necessity and object of the enactments, and thereby enabling them to be the more readily applied to any individual case, fully justify the mode I have adopted.

It is, of course, not intended to treat of the law or practice of effecting Commutations of Tithes, and of some other matters relating to the Rent-Charge not within the scope of the work; but I have been induced to introduce, towards the close of the volume, some chapters on subjects affecting the Rent-Charge subsequent to the apportionment, lest it should be inferred that after the confirmation of the apportionment, no alteration could take place in the condition of the Rent-Charge.

I have concluded the work with a chapter on compulsory contribution to the Rent-Charge; an important one, as between several land-owners of an allotment.

Having since the publication of the former edition been employed in advising on and enforcing the payment of Tithe Rent-Charge in several parishes, I have made such revisions in the present edition as my further experience has suggested; and also added the alterations made by the statutes passed since the first edition was printed.

C. J. J.

19, Spital Square, London.

CONTENTS.

CHAPTER I.

CHAPTER II.

OF THE CREATION AND APPORTIONMENT OF TITHE-COMMUTATION RENT-CHARGE.

CHAPTER III.

OF THE VARIATION IN THE AMOUNT OF THE RENT-CHARGE; THE RATES AND CHARGES THEREON; THE COMMENCEMENT OF THE CHARGE; EXTRAORDINARY CHARGE; AND RENT-CHARGE OF LAMMAS LANDS AND COMMONS.

CHAPTER IV.

OF THE COLLECTION OF THE RENT-CHARGE; AND OF THE PAYMENT THEREOF AS BETWEEN LAND-OWNER AND OCCUPIER.

CHAPTER V.

CHAPTER VI.

OF THE PROVISIONS AS TO DISTRESS.

CHAPTER VII.

OF THE REMEDY BY DISTRESS FOR RENT BY A LANDLORD, SO FAR AS IT APPLIES TO TITHE-COMMUTATION RENT-CHARGE.

CHAPTER VIII.

OF THE IMPOUNDING, NOTICE, APPRAISEMENT, AND SALE OF THE DISTRESS.

CHAPTER IX.

OF SUBSEQUENT PROCEEDINGS ON THE DISTRESS.

CHAPTER X.

OF THE PROCEEDINGS TO RECOVER POSSESSION.

CHAPTER XI.

OF THE POSSESSION OF THE LAND, AND SUBSEQUENT PROCEEDINGS.

CHAPTER XII.

CHAPTER XIII.

CHAPTER XIV.

OF DEFINING GLEBE-LANDS, AND GIVING LAND IN LIEU OF RENT-CHARGE; FIXING THE COMMENCEMENT OF THE RENT-CHARGE AFTER THE APPORTIONMENT; A NEW APPORTIONMENT IN CASE OF SMALL HOLDINGS; THE RE-APPORTIONMENT OF THE RENT-CHARGE CHARGED ON AN ALLOTMENT; THE REDEMPTION OF THE RENT-CHARGE IN CERTAIN CASES; THE ALTERATION OF THE APPORTIONMENT AFTER INCLOSURE OF LANDS; A SUPPLEMENTAL APPORTIONMENT IN RESPECT OF THE OWNERS OF THE RENT-CHARGE; THE REMOVAL OF COPY OF INSTRUMENT OF APPORTIONMENT; AND THE CORRECTION OF THE APPORTIONMENT WHEN LANDS IMPROPERLY CHARGED WITH RENT-CHARGE.

CHAPTER XV.

CHAPTER XVI.

CHAPTER I.

OF RENTS IN GENERAL.

1. RENTS are a species of incorporeal hereditament. The word rent, or render, *reditus*, signifies a compensation or return; it being in the nature of an acknowledgment given for the possession of some corporeal hereditament.—*Co. Litt.* 144. There are at common law three descriptions of rents: Rent-Service, Rent-Charge, and Rent-Seck.—*Litt.* § 213. 2 *Bl. Comm.* 41.

2. Rent-Service is so called because it hath some corporal service incident to it, as, at the least fealty, or the fœdal oath of fidelity. (*Co. Litt.* 142 *a.*) For if a tenant holds his land by fealty and ten shillings rent; or by the service of ploughing the lord's land and five shillings rent; these pecuniary rents being connected with personal services, are therefore called rent-service. And for these, in case they be behind, or in arrear at the day appointed, the lord may distrain of common right, without reserving any special power of distress; provided he hath in himself the reversion, or future estate of the lands and tenements, after the lease or particular estate of the lessee or grantee is expired.—*Litt.* § 215. 2 *Bl. Comm.* 42.

3. A Rent-Charge is where the owner of the rent hath no future interest, or reversion expectant in the land; as where a man by deed maketh over to others his whole estate in fee simple, with a certain rent payable thereout, and adds to the deed a covenant or clause of distress, that if the rent be in arrear, or behind, it shall be lawful to distrain for the same. In this case the land is liable to the distress, not of common right, but by virtue of the clause in the deed; and therefore it is called a Rent-Charge, because in this manner the land is charged with a distress for the payment of it.—*Co. Litt.* 143 *b.* 2 *Bl. Comm.* 42.

4. Rent-Seck, or barren rent, is in effect nothing more than a rent reserved by deed without any clause of distress.—*Litt.* § 218. There are also other names given to rents, but which are reducible to these three kinds.—2 *Bl. Comm.* 42.

5. These are the general divisions of rent; but the difference between them (in respect to the remedy for recovering them) is now totally abolished; and all persons may have the like remedy by distress for rents seck, &c., as in case of rents reserved upon lease.—4 *Geo. II. c.* 28. *s.* 5. 2 *Bl. Comm.* 43.

CHAPTER II.

OF THE CREATION AND APPORTIONMENT OF TITHE COMMUTATION RENT-CHARGE.

SECTION I.

Of the Creation of Tithe Commutation Rent-Charge.

6. The Tithe Commutation Rent-Charge is created under the statutes for the commutation of tithes in England and Wales; being the compensation directed by those statutes to be paid in lieu of tithes. The compensation is properly called a Rent-Charge, the party to whom it is payable having no estate in the land out of which it is payable, but the land being made liable to a distress for the recovery of it under a clause in the statute.

7. It is observable however, that in the case of an ordinary Rent-Charge the owner of the Rent-Charge derives his title to the Rent-Charge out of the title to the lands; but the owner of Tithe Commutation Rent-Charge holds the Rent-Charge under his own title to the tithes for which the Rent-Charge is substituted, distinct from and independent of the title to the land out of which the Rent-Charge issues.

8. The several Acts of Parliament relating to the Commutation of Tithes are the following:—

6 & 7 *William IV. cap.* 71, entitled, "An Act for the Commutation of Tithes in England and Wales." Passed 13th August, 1836.

7 *William IV.* & 1 *Victoria, cap.* 69, entitled, "An Act to amend an Act for the Commutation of Tithes in England and Wales." Passed 15th July, 1837.

1 & 2 *Victoria, cap.* 64, entitled, "An Act to facilitate the Merger of Tithes in Land." Passed 4th August, 1838.

2 & 3 *Victoria, cap.* 62, entitled, "An Act to explain and amend the Acts for the Commutation of Tithes in England and Wales." Passed 17th August, 1839.

3 & 4 *Victoria, cap.* 15, entitled, "An Act further to explain and amend the Acts for the Commutation of Tithes in England and Wales." Passed 4th June, 1840.

5 & 6 *Victoria, cap.* 54, entitled, "An Act to amend the Acts for the Commutation of Tithes in England and Wales, and to continue the officers to be appointed under the said Acts for a time to be limited." Passed 30th July, 1842.

9 & 10 *Victoria, cap.* 73, entitled, "An Act further to amend the Acts for the Commutation of Tithes in England and Wales." Passed 26th August, 1846.

10 & 11 *Victoria, cap.* 104, entitled, "An Act to explain the Acts for the Commutation of Tithes in England and Wales, and to continue the officers appointed under the said Acts until the 1st day of October, 1850, and to the end of the then next Session of Parliament." Passed 22nd July, 1847.

These several Acts to amend the original Act (except the last one) are directed to be construed with, and as part of the first Act as amended by the several Acts for the amendment thereof.—7 *Wm. IV.* & 1 *Vic. c.* 69. *s.* 14. 2 & 3 *Vic. c.* 62. *s.* 37. 3 & 4 *Vic. c.* 15. *s.* 29. 5 & 6 *Vic. c.* 54. *s.* 20. 9 & 10 *Vic. c.* 73. *s.* 20. 23.

9. By virtue of the first of these statutes (6 & 7 *Wm. IV. c.* 71), Tithes may be commuted for a Rent-Charge, either by a voluntary parochial agreement, executed by the land-owners and tithe-owners, whose interest in the lands and tithes of the parish are not less than two-thirds of the lands subject to tithes, and two-thirds of the tithes, *sec.* 17—19, and confirmed by the Tithe Commissioners, *sec.* 27; or by the compulsory award of the Commissioners, *sec.* 36, *et seq.*

10. The Rent-Charge thus created is apportioned among the lands of the parish by an instrument of apportionment confirmed by the Tithe Commissioners, *sec.* 53, *et seq.*

11. The Rent-Charge is directed by the statute to issue out of the lands charged therewith; and may be recovered by distress and entry, as mentioned in the Act, *sec.* 67.

12. For carrying out the objects of the commutation, supplemental parochial agreements, or supplemental awards, or an agreement after an award, or an award after an agreement, may be made.—7 *Wm. IV.* & 1 *Vic. c.* 69. *s.* 11. 2 & 3 *Vic. c.* 62. *s.* 8—13. 3 & 4 *Vic. c.* 15. *s.* 11—16. 5 & 6 *Vic. c.* 54. *s.* 3. 6. 9 & 10 *Vic. c.* 73. *s.* 16.

13. The word "parish" or "parochial" in the Acts, means every parish and every extra-parochial place, and every township or village within which overseers of the poor are separately appointed under the 13 & 14 *Car. II. c.* 12, and every district of which the tithes are payable under a separate impropriation or appropriation, or in a separate portion or parcel, or which the Commissioners shall by any order direct to be considered as a separate district for the Commutation of Tithes, 6 & 7 *Wm. IV. c.* 71. *s.* 12. And the Commissioners are empowered to declare that lands as to which doubts have arisen shall be considered a separate district for Commutation, and the residue of the parish to remain subject to the original agreement or award, 9 & 10 *Vic. c.* 73. *s.* 16.

14. The provisions for commutation extend to all uncommuted tithes, portions and parcels of tithes, and all moduses, compositions real, and prescriptive and customary payments, 6 & 7 *Wm. IV. c.* 71. *s.* 12. And, by parochial agreement, Easter offerings, mortuaries or surplice fees, or the tithes of fish or fishing, or mineral tithes may also be commuted. —*sec.* 90. 2 & 3 *Vic. c.* 62. *s.* 9.

15. But, unless by special provision in a parochial agreement, and specially approved by the Commissioners (in which case the same shall be valid), the Acts do not extend to personal tithes other than the tithes of mills, to any payment in lieu of tithes arising within the city of London, or in any city or town under any custom or private Act of Parliament, or to any lands or tenements, the tithes whereof have been commuted or extinguished under any Act of Parliament.—*sec.* 90.

SECTION II.

Of the Agreement or Award.

16. The Agreement or Award, after stating the total quantity of lands within the parish subject to tithes, and their different modes of cultivation, and any moduses or exemptions from tithes, fixes the total sum to be paid by way of Rent-Charge in lieu of tithes, and to whom and in what right, *s.* 21. 50. But, in some cases, the award of the Rent-Charge may be made to the tithe-owners by general description. —2 & 3 *Vic. c.* 62. *s.* 24.

17. The tithes of hops, fruit, and garden produce, or coppice, or of mixed plantations of hops and fruit within the parish, or a district to be assigned by the Commissioners, may be separately valued, 6 & 7 *Wm. IV. c.* 71. *s.* 40, 41. 2 & 3 *Vic. c.* 62. *s.* 32; or the parties to a parochial agreement may assign a district in respect of hop-grounds, 2 & 3 *Vic. c.* 62. *s.* 33; or the parties to a parochial agreement, or the Commissioners by award, may declare an extraordinary charge per acre for hop-grounds and market-gardens.—3 & 4 *Vic. c.* 15. *s.* 18.

18. The tithes of glebe lands, or of lands having been the possessions of any privileged order, may also be separately valued, *s.* 43 *of the original Act.* So also crown lands of the tenure of ancient demesne, or otherwise partially exempt from tithes.—2 & 3 *Vic. c.* 62. *s.* 12.

19. The agreement or award may fix the sum to be paid in consideration of the time (if any) which may intervene between the termination of any previous composition for tithe and the commencement of the Rent-Charge; or it may fix the period from which the lands are to be discharged from tithes.—7 *Wm. IV.* & 1 *Vic. c.* 69. *s.* 10, 11. 2 & 3 *Vic. c.* 62. *s.* 10. 3 & 4 *Vic. c.* 15. *s.* 11, 13.

20. A parochial or individual agreement may also be entered into, for giving not exceeding twenty imperial acres of land in lieu of tithes.—6 & 7 *Wm. IV. c.* 71. *s.* 29. 62.

21. The tithes of lammas and common lands may be specially commuted.—2 & 3 *Vic. c.* 62. *s.* 13. 3 & 4 *Vic. c.* 15. *s.* 15.

22. A fixed Rent-Charge may be substituted for a contingent one where lands are partially exempt from tithes.—2 & 3 *Vic. c.* 62. *s.* 11, 12. 3 & 4 *Vic. c.* 15. *s.* 14.

23. The tithes in certain cases may be merged in the inheritance of the lands.—6 & 7 *Wm. IV. c.* 71. *s.* 71. 1 & 2 *Vic. c.* 64. 2 & 3 *Vic. c.* 62. *s.* 6. 9 & 10 *Vic. c.* 73. *s.* 18, 19.

24. The Commissioners may determine disputes as to right to tithes, and questions of moduses, and exemptions, and of boundaries of lands subject to appeal, 6 & 7 *Wm. IV. c.* 71. *s.* 45, 46. 7 *Wm. IV.* & 1 *Vic. c.* 69. *s.* 2, 3. 2 & 3 *Vic. c.* 62. *s.* 34. 3 & 4 *Vic. c.* 15. *s.* 28. 9 & 10 *Vic. c.* 73. *s.* 21. And may define glebe lands or exchange them for other lands, 5 & 6 *Vic. c.* 54. *s.* 5. 9 & 10 *Vic. c.* 73. *s.* 22. But they have no jurisdiction to decide

who is the party entitled to receive the Rent-Charge, Edwards *v.* Bunbury, 3 *Gale* & *D.* 229. 3 *Ad.* & *E. N. S.* 885.

25. Where the amount of the Rent-Charge does not exceed 15*l.*, the same may be redeemed before apportionment, with the consent of the tithe-owner.—9 & 10 *Vic. c.* 73. *s.* 1.

SECTION III.

Of the Apportionment.

26. The Instrument of Apportionment is engrossed on parchment, the map or plan of the parish being annexed; and is also confirmed by the Tithe Commissioners, under their hands and seal, who add thereto the date of the confirmation.—6 & 7 *Wm. IV. c.* 71. *s.* 63.

27. This original Instrument of Apportionment is deposited at the office of the Tithe Commission, *sec.* 63. Two copies are made, and sealed with the seal of the Commissioners, and one copy is deposited in the Registry of the diocese, and the other copy deposited with the Incumbent and Church or Chapel Wardens of the parish, or such other fit persons as the Commissioners shall approve, to be kept with the public writings of the parish—*sec.* 94. But the place of deposit of the latter copy may be altered by Quarter Sessions.—9 & 10 *Vic. c.* 73. *s.* 17.

28. All persons interested may have access to, and be furnished with copies of, or extracts from any such copy on reasonable notice, and on the payment

of 2*s.* 6*d.* for the inspection, and after the rate of 3*d.* for every seventy-two words of the copies or extracts.—*sec.* 64 *of original Act.*

29. The original Tithe Commutation Act declares, that every recital or statement in, or map or plan annexed to such confirmed Apportionment, or any sealed copy thereof, shall be deemed satisfactory evidence of the matters therein recited or stated, or of the accuracy of such plan.—*s.* 64. and see *s.* 2.

30. But by subsequent Acts (1 & 2 *Vic. c.* 69. *s.* 1. and 2 & 3 *Vic. c.* 62. *s.* 22.) power is given to the Commissioners to confirm Instruments of Apportionment, to which is annexed a map or plan agreed to be adopted by a parochial meeting, although not satisfied of the accuracy of the map or plan, or that the quantities of land specified therein are truly stated; but no recital of quantity or admeasurement of land stated in such Apportionment, nor any map or plan annexed thereto, nor any copy thereof, shall be deemed evidence of the quantity of land referred to, or of the accuracy of the map or plan, unless the map or plan, as well as the Instrument of Apportionment, shall be signed by the Commissioners, and sealed with their official seal; but the Commissioners may certify under their hands upon such map or plan, that the same is the map or plan referred to in the Apportionment, which shall be evidence of that fact.

31. The Apportionment sets forth the agreement or award, and also the supplemental agreements and awards, if any, upon which it is founded.

32. The Apportionment is by the original statute required also to state—

The name or description, and the true or estimated quantity in statute measure of the several lands comprised therein.

The names and descriptions of the several proprietors and occupiers thereof.

Whether the lands are cultivated as arable, meadow, or pasture land, or as woodland, common land, or howsoever otherwise.

To refer, by a number set against the description of such lands, to a map or plan to be drawn on paper or parchment, and the same number to be marked on the representation of such lands in the map or plan.

And to state the amount charged upon the several lands.

And to whom, and in what right payable.—*sec.* 55.

The extraordinary charge for hop-grounds and market-gardens is to be distinguished from the ordinary charge; the extraordinary charge to be a rate per imperial acre.—*sec.* 42.

The Apportionment was also to state the value of the Rent-Charge in imperial bushels, and decimal parts of an imperial bushel of wheat, barley, and oats, ascertained as directed by the Act.—*sec.* 57.

33. But by the 7 *Wm. IV.* & 1 *Vic. c.* 69. *s.* 4. it shall not be necessary to state in the Apportionment the several quantities of wheat, barley, and oats, charged upon the estate of any land-owner, or any portion of such estate, provided that the whole amount of Rent-Charge, and the whole number of bushels of wheat, barley, and oats be stated therein,

and also the several sums of money of equal value with the quantity of wheat, barley, and oats apportioned on each estate or separate portion thereof be also stated.

34. Nor shall it be necessary to state in a Voluntary Apportionment made in consequence of a parochial agreement, the mode of cultivation, nor the amount charged on the several closes of every land-owner, if three-fourths of the land-owners request the Commissioners to direct that such statements be omitted.—*7 Wm. IV.* & 1 *Vic. c.* 69. *s.* 5.

35. The Rent-Charge on the lands of any land-owner, held under the same title and for the same estate, in the same parish, may be specially apportioned, with the consent of the tithe-owner.—6 & 7 *Wm. IV. c.* 71. *s.* 58.

36. Where the Rent-Charge is payable to an owner in different rights, the amounts, and the lands out of which the same issue, are to be distinguished.—2 & 3 *Vic. c.* 62. *s.* 24.

37. At the request of two-thirds of the owners of orchards or fruit-plantations, the ordinary charge and extraordinary fruit-charge are to be distinguished; the extraordinary charge to be a rate per imperial acre.—2 & 3 *Vic. c.* 62. *s.* 26.

38. Where land liable to extraordinary charge for mixed plantations of hops and fruit, is subject to both rectorial and vicarial tithes, payable to different persons, the Apportionment is to set out the same, distinguishing the amount of ordinary and extraordinary charge payable to each tithe-owner.—*sec.* 30.

39. But by 3 & 4 *Vic. cap.* 15. *sec.* 19, it is not necessary to distinguish in the Apportionment the amount of extraordinary Rent-Charge to be charged upon the lands of each individual land-owner cultivated as hop-grounds, market-gardens, orchards, fruit-plantations, or mixed plantations of hops and fruit, provided that the acreable amount of extraordinary charge for all the lands so cultivated be inserted.

40. And by *sec.* 21 of that Act, unless a majority in value of the land-owners request the Commissioners to omit the same, the Apportionment is to distinguish the amount or portion of Rent-Charge payable in respect of the several closes of lands, and such closes are to be laid down in the map or plan: but this is not to apply where the valuers were appointed before the passing of the Act; and the Apportionment is not to be deemed invalid if made in conformity with the instructions given to the valuers.

41. And by *sec.* 25, the Commissioners may direct that no part of the Rent-Charge shall be apportioned on gardens, lawns, and other like small holdings, which did not contribute to the averages.

42. By the original Act, *sec.* 66, no confirmed Agreement, Award, or Apportionment shall be impeached after the confirmation thereof, by reason of any mistake or informality therein, or in any proceeding relating thereunto.

43. And by the 10 & 11 *Vic. c.* 104. *s.* 2. reciting that by the first therein recited Act (6 & 7 *Wm. IV. c.* 71), it was enacted, for the quieting of titles, that no confirmed Agreement, Award, or Apportionment,

should be impeached after the confirmation thereof, by reason of any mistake or informality therein, or in any proceeding relating thereunto, and doubts had been entertained as to the full meaning and extent of such enactment; it is declared and enacted, that, notwithstanding any exception in the said Act contained, every instrument purporting to be an Instrument of Apportionment, confirmed under the hands and seal of the said Tithe Commissioners, shall be thereby absolutely confirmed and made valid, both at law and in equity, in all respects, subject nevertheless to the powers given to the Tithe Commissioners in the first-recited Act, or in any Act passed for the amendment thereof, for alteration of any Instrument of Apportionment. As to alteration of apportionment after confirmation, see chap. xiv.

44. And no Order, Adjudication, or Proceeding of the Commissioners shall be quashed for want of form, nor be removable into any court of record at Westminster, or elsewhere, *sec.* 95 *of original Act;* except orders as to boundaries.—*7 Wm. IV.* & *7 Vic. c.* 69. *s.* 3.

CHAPTER III.

OF THE VARIATION IN THE AMOUNT OF THE RENT-CHARGE; THE RATES AND CHARGES THEREON; THE COMMENCEMENT OF THE CHARGE; EXTRAORDINARY CHARGE; AND RENT-CHARGE OF LAMMAS LANDS AND COMMONS.

SECTION I.

Of the Variation in the Amount of the Rent-Charge.

45. THE original statute required that immediately after its passing, and also in the month of January in every year, the Comptroller of corn returns should cause an advertisement to be inserted in the London Gazette, stating what had been, during seven years ending on the Thursday next before Christmas-day then next preceding, the average price of an imperial bushel of British wheat, barley, and oats, computed from the weekly averages of the corn returns.—*sec.* 56.

46. And the Rent-Charge is to be deemed at the time of the confirmation of the apportionment of the value of such number of imperial bushels and decimal parts of an imperial bushel of wheat, barley, and oats, as the same would have purchased at the prices so ascertained by the advertisement to be published

immediately after the passing of the Act; in case one-third part of the Rent-Charge had been invested in the purchase of wheat, one-third part in barley, and the remaining third-part in oats, *sec.* 57. And by the 7 *Wm. IV.* & 1 *Vic. c.* 69. *s.* 7, these prices are declared to be seven shillings and one farthing for a bushel of wheat, three shillings and eleven pence halfpenny for a bushel of barley, and two shillings and nine pence for a bushel of oats.

47. After every first day of January the Rent-Charge shall vary so as always to consist of the price of the same number of bushels and decimal parts of a bushel of wheat, barley, and oats, respectively, according to the prices ascertained by the then next preceding advertisement; and any person entitled to any such varied Rent-Charge, shall have the same powers for enforcing payment thereof as of the original Rent-Charge.—*sec.* 67 *of original Act.*

48. By the 3 & 4 *Vic. cap.* 15. *sec.* 20, every half-yearly payment of the Rent-Charge shall be regulated by the averages published under the provisions of the first Act, in the month of January next preceding every such half-yearly day of payment.

49. Thus the Rent-Charge becoming due in April, July, or October, 1848, or January, 1849, is regulated by the advertisement in the London Gazette of January, 1848. The Rent-Charge due in January, 1848, was regulated by the return advertised in January, 1847.

50. The average prices of corn are made up according to the 5 & 6 *Vic. c.* 14.

51. To calculate the variation, some amount may

be taken, say 300*l.*, and divided into three parts, thus:—

	£	s.	d.
If wheat at 7*s.* 0½*d.* cost 100*l.*, what will it cost at 6*s.* 10½*d.*? ..... Answer	97	12	6½
If Barley at 3*s.* 11½*d.* cost 100*l.*, what will it cost at 4*s.* 1½*d.*? ..... Answer	103	13	8½
If oats at 2*s.* 9*d.* cost 100*l.*, what will they cost at 2*s.* 8¾*d.*?	99	4	10½
Total	£300	11	0½

To ascertain first the quantities in corn, and then what such quantities would cost at the prices of the averages, would be a circuitous and unnecessary mode of making the calculation.

But as for a Rent-Charge of 300*l.*, the number of bushels and decimal parts of a bushel of wheat are 284·86646; of barley, 505·26315; and of oats, 727·27272, the averages may be ascertained by calculating by those numbers, or by any other known quantities, the differences in the prices of corn thus:—

505·26315 times 1¾*d.* addition for the difference in the price of barley, for 1849 are ..... pence	884·21050
284·86646 times 2*d.* deduction for the difference in the price of wheat, are ..... pence	569·73292
727·27272 times ¼*d.* deduction for the difference in the price of oats, are ..... pence	181·81818
	751·55110
Addition for variation on 300*l.* ..... pence	132·65940

or £0. 11*s.* 0·65940*d.*

Being 3*s.* 8½*d.* per cent. addition for variation.

Having ascertained the amount of the variation for 100*l.* or other given sum, there will be little difficulty in applying the result to any other amount.

52. The seven years' averages from 1835, have been as follows:—

		Wheat.	Barley.	Oats.
		s. *d.*	*s.* *d.*	*s.* *d.*
For seven years ending on Thursday next before Christmas,	1835	7 0½	3 11½	2 9
	1836	6 8½	3 11½	2 9
	1837	6 8½	3 11½	2 8¾
	1838	6 6½	3 9½	2 8
	1839	6 9	3 11½	2 9½
	1840	6 11½	4 1	2 10¾
	1841	7 3¾	4 2	2 11½
	1842	7 7½	4 1½	2 10½
	1843	7 7¾	4 0½	2 9½
	1844	7 7	4 1½	2 9
	1845	7 4	4 1½	2 9
	1846	7 0½	4 0	2 8½
	1847	7 1½	4 1½	2 9½
	1848	6 10½	4 1½	2 8½

SECTION II.

Of Rates and Charges on the Rent-Charge.

53. The Rent-Charge is subject to all parliamentary, parochial, and county and other rates, charges, and assessments, in like manner as were the tithes commuted.—6 & 7 *Wm. IV. c.* 71. *s.* 69.

54. All rates and charges to which the Rent-Charge is liable may be assessed upon the occupier of the lands out of which the same shall issue; and in case the same be not sooner paid by the owner of the Rent-Charge, may be recovered from the occupier in like manner as any poor-rate assessed on him in respect of such lands; and any occupier holding under

a landlord, and paying the rate or charge, shall be entitled to deduct the amount from the rent next payable by him to his landlord, and be allowed the same in account with him; and any landlord or owner in possession who shall have paid such rate or charge, or from whose rent the same shall have been deducted, or who shall have allowed the same to a tenant, shall be entitled to deduct the amount from the Rent-Charge, or by all other lawful ways and means to recover the same from the owner of the Rent-Charge, his executors and administrators; but reserving to the owner the right of inspecting the assessment, and appealing against the rate.—*sec.* 70.

55. Or the rates and charges to which the Rent-Charge shall be liable may be assessed upon the owner of the Rent-Charge, and may be recovered from any of the occupiers of the lands out of which the same shall issue, in case the same be not sooner paid by the owner of the Rent-Charge, in like manner as any poor-rate assessed on such occupiers, upon giving to such occupiers twenty-one days' notice in writing, previous to any one of the half-yearly days of payment of the Rent-Charge; and the collector's receipt for such rates and charges shall be received in satisfaction of so much of the Rent-Charge by the owner thereof; but no occupier shall be liable to pay at any one time, in respect of such rates and charges, any greater sum than the Rent-Charge payable in respect of the lands occupied by him in the same parish shall amount to for the current half year in which such notice shall have been given.—*7 Wm. IV.* & 1 *Vic. c.* 69. *s.* 8.

56. By the 3rd *sec.* of the 2 & 3 *Vic. cap.* 62, the assessor or collector of any rate or tax shall, within forty days after notice in writing, signed by any land-owner or tithe-owner interested therein, specify in his assessment, the names of the occupiers of tenements subject to such rate or tax, as well as the sum assessed on the tenements held by each such occupier.

57. By the 5 & 6 *Vic. cap.* 35, the Property Tax Act, the duty of 7*d.* for every 20*s.* is imposed on hereditaments, and (*sec.* 2.) at the like rate for the fractional part of 20*s.*; but no duty shall be charged of a lower denomination than a penny.

58. The assessment is not to be made on the Rent-Charge, (*sec.* 60. rule II. third.) But by No. IV., tenth rule: Where any lands, tenements, or hereditaments, are subject to Tithe Commutation Rent-Charge, the landlord, owner, or proprietor by whom any deduction shall have been allowed for Property Tax to the occupier, and the owner or proprietor, being also occupier, and charged to the said duties, shall deduct out of the Rent-Charge so much of the said duties, on account of the same, as a like rate of 7*d.* for every 20*s.* on such Rent-Charge, shall by a just proportion amount unto; and all persons entitled to such annual payment, their receivers, deputies, or agents, are thereby required to allow such deduction, upon the receipt of the residue of such annual payment, without any fee or charge for such allowance, and under the penalty therein contained; and the landlord, owner, proprietor, and occupier respectively, being charged as aforesaid, or having

allowed such deduction, shall be discharged of so much money as if the same had actually been paid.

59. The refusal to allow such deductions out of the Rent-Charge incurs the penalty of 50*l.*; and all contracts entered into for payment in full, without allowing such deduction, shall be utterly void, *sec.* 103. And by *sec.* 185, in any proceeding by Her Majesty for the recovery of such penalty, the same shall be recovered with full costs of suit, and all charges and expenses attending the same.

60. The Rent-Charge being made out of profits arising from lands, such deductions are to be made without any certificate of the Commissioners being obtained, as is required in the case where interest is paid out of the profits of trade.—*sec.* 104.

61. The Property Tax has been continued by the 8 & 9 *Vic. c.* 4. and the 11 & 12 *Vic. c.* 8.

62. The Property Tax Commissioners sometimes assess the Rent-Charge owner, on the Rent-Charge, and in assessing the lands and tenements make the assessments on the rent exclusive of the Rent-Charge, instead of assessing the lands and tenements on the full rent, including the Rent-Charge, and not assessing the Rent-Charge in the hands of the Rent-Charge owner, as required by the Act. But this is irregular and attended with much inconvenience.

SECTION III.

Of the Commencement and Times of Payment of the Rent-Charge.

63. By the original Act (*sec.* 67.) the lands of the parish are discharged from the payment of tithes from the 1st day of January next following the confirmation of the Apportionment, and the Rent-Charge thenceforth becomes payable by two equal half-yearly payments, on the 1st day of July, and 1st day of January, the first payment being on the first day of July next after the lands are discharged from tithes.

64. But by 7 *Wm. IV.* & 1 *Vic. cap.* 69. *s.* 11, the parties to a parochial agreement may agree thereby, or by a supplemental agreement, that the lands shall be discharged from tithes from the first day of January next preceding, or from the first day of April, or first day of July, or first day of October, preceding or following the confirmation of the Apportionment, provided that the first payment of Rent-Charge be made and recoverable on the expiration of six calendar months from the time from which the lands are discharged from tithes.

65. This clause applied only to cases of voluntary commutation by parochial agreement; but by the statute 2 & 3 *Vic. c.* 62. *s.* 10, the power to fix the commencement of the Rent-Charge is extended to the Commissioners by their compulsory award, or to the parties after an award, by a parochial agreement, and the power is, by 3 & 4 *Vic. c.* 15. *s.* 11,

further extended to the Commissioners by a supplemental award, and by 5 & 6 *Vic. c.* 54. *s.* 3, to the parties after the confirmation of the Apportionment.

66. With the first payment of Rent-Charge shall also be paid any sum agreed or awarded to be paid in consideration of the time (if any) which may intervene between the termination of any previous composition for tithes, and the commencement of the Rent-Charge. —*7 Wm. IV.* & 1 *Vic. c.* 69. *s.* 10. 2 & 3 *Vic. c.* 62. *s.* 10. 3 & 4 *Vic. c.* 15. *s.* 11, 12.

SECTION IV.

Of Extraordinary Rent-Charge.

67. It has already be shown that the parish or a district may be assigned for an extraordinary charge for hop-grounds, orchards, and market-gardens (No. 17.), and that such extraordinary Rent-Charge is to be distinguished from the ordinary charge in the Apportionment (Nos. 32. 37. & 38.), or, at the least, that the acreable amount of extraordinary charge be stated. (No. 39.)

68. Lands which shall cease to be cultivated as hop-grounds, or market-gardens, after the commutation, shall be charged after the 31st day of December next following the change of cultivation, only with the ordinary charge; and the lands which shall be newly cultivated as hop-grounds or market-gardens after the commutation, shall be charged with an additional amount of Rent-Charge per imperial acre,

equal to the extraordinary charge per acre upon hop-grounds or market-gardens in that district.—6 & 7 *Wm. IV. c.* 71. *s.* 42. 3 & 4 *Vic. c.* 15. *s.* 18.

69. No such additional amount shall be payable during the first year, and half only of such additional amount during the second year of such new cultivation.—*Ib.*

70. An additional Rent-Charge, by way of extraordinary charge upon hop-grounds and market-gardens newly cultivated as such beyond the limits of any assigned district, shall be charged by the Commissioners at the time of such new cultivation, upon the request of any person interested therein, if such new cultivation take place during the continuance of the Tithe Commission, and after the expiration of the Commission, shall be charged as parliament shall direct.—6 & 7 *Wm. IV. c.* 71. *s.* 42.

71. Lands situate within the limits of any parish in which an extraordinary fruit-charge shall have been distinguished, and which shall be newly cultivated as orchards or fruit-plantations after the commutation, shall be charged with an additional amount of Rent-Charge per imperial acre, equal to the extraordinary fruit-charge per acre in the parish.—2 & 3 *Vic. c.* 62. *s.* 27.

72. But no such additional amount shall be charged for plantations of apples, pears, plums, cherries, and filberts, during the first five years, and half only of such additional amount during each of the succeeding five years of such new cultivation; and no such additional amount shall be charged for plantations of gooseberries, currants, and raspberries, during the

first two years, and half only of such additional amount during each of the succeeding two years, of such new cultivation; and no such additional amount shall be charged for mixed plantations of apples, pears, plums, cherries, or filberts, and of gooseberries, currants, or raspberries, during the first three years, and half only of such additional amount during the succeeding three years of such new cultivation.—*Ib.*

73. Lands which shall cease to be cultivated as orchards or fruit plantations after the commutation, shall be charged, after the 31st day of December next following such change of cultivation, only with the ordinary charge.—*sec.* 28.

74. Mixed plantations of hops and fruit are to be liable to the extraordinary hop charge, or extraordinary fruit charge only, which ever shall be the higher of the two for the time being, and not to both those charges.—*sec.* 29.

75. In mixed plantations of hops and fruit subject to rectoral and vicarial tithes, the Apportionment is to distinguish the Rent-Charge payable to each (*sec.* 30); and in future mixed plantations of hops and fruit, the extraordinary charge shall be divided between such owners, in proportion to the extent of land occupied by the produce which would have paid tithe to them respectively.—*sec.* 31.

SECTION V.

Of Rent-Charge of Lammas Lands and Commons.

76. The statute of the 2 & 3 *Vic. cap.* 62. recites that large tracts of land, called Lammas lands, are in

the occupation of certain persons during a portion of the year only, and are liable to the tithes of the produce of the lands increasing and growing thereon during such occupation, and at other portions of the year are in the occupation of other persons, and in their hands liable to different kind of tithes arising from the agistment produce or increase of cattle or stock thereon; and by reason of such change of occupation, such last-mentioned tithes cannot be commuted for a Rent-Charge issuing out of the lands, and the Tithe Acts are thereby rendered inoperative in parishes where Lammas lands lie: and recites that the Acts are in like manner inoperative in certain cases, where a personal right of commonage, or a right of common in gross, is vested in certain persons by reason of inhabitancy or occupation in the parish where any common may lie, or by custom or vicinage, but without having such right of common so annexed, or appurtenant to, or arising out, or in respect of any lands on which any Rent-Charge could be fixed instead of the tithes of the cattle or stock, or their produce, increase, or agistment on such common, annexed to such personal right; for remedy thereof, it is enacted, that in every case where by reason of the peculiar tenure of such lands, and the change during the year of the occupiers thereof, or of right of commonage, a Rent-Charge cannot, in the judgment of the Commissioners, be fixed on the lands in respect of cattle and stock received and fed thereon, or of the produce and increase of such cattle and stock, at such portion of the year as the lands are thrown open, or where such right of commonage

alone exists, it shall be lawful for the parties interested in such lands or commons, and the tithes thereof, by a parochial agreement, or for the Commissioners by their award, to fix a Rent-Charge, instead of the tithes of such Lammas lands or commons, to be paid during the separate occupation thereof by the separate occupiers, in like manner as other Rent-Charges are fixed by the said Acts, and to declare in such agreement, or award, such a sum or rate per head to be paid for each head of cattle or stock turned on to such Lammas land or commons, by the parties entitled to the occupation thereof, after the same shall have been so thrown open, or by the parties entitled to such right of commonage.—2 & 3 *Vic. c.* 62. *s.* 13. 3 & 4 *Vic. c.* 15. *s.* 15.

77. Every such sum is to be ascertained, and fixed upon a calculation of the tithes received in respect of such occupation or right for the period, and according to the provisions for fixing Rent-Charges in the Acts, and shall be due and payable by the owner of such cattle or stock, on the same being first turned upon such lands or commons, and shall be recoverable by the persons entitled thereto, by distress and impounding of the cattle or stock, in respect of which such sum shall be due, in like manner as cattle are distrained and impounded for rent, and be subject to the same provisions as to distress and replevin of the same as are by law provided in cases of distress for rent.—*Ib.*

78. The clause does not extend to Lammas lands where no tithes were taken during the seven years of average in respect of the cattle or stock received and

fed thereon, or of the produce and increase of such cattle or stock at such portion of the year as the lands are thrown open.—*Ib.*

CHAPTER IV.

OF THE COLLECTION OF THE RENT-CHARGE; AND OF THE PAYMENT THEREOF AS BETWEEN LANDOWNER AND OCCUPIER.

SECTION I.

Of the Collection of the Rent-Charge.

79. THE previous chapters show the principal matters which may arise in the creation of the Rent-Charge, and the apportionment of it among the lands of the parish, and which are intended as a guide to the perusal of the Instrument of Apportionment. This document contains all the particulars of which the owner of the Rent-Charge need be informed, and is his muniment of title to the Rent-Charge. It follows that it is absolutely necessary that he possess a copy of the Instrument of Apportionment.

80. The owner of the Rent-Charge should also possess a copy of the map, for his own reference, and for explanation to the payers; if he have no other one, a copy can easily be taken on tracing paper. Without this, he cannot always know to what lands the numbers refer, and parties may be applied to for payment improperly, and who may pay through ignorance.

81. The statements of the lands in the parish are in the Apportionment made either alphabetically of the names of the owners, or arbitrarily; but in large districts it may be found more convenient for the owner of the Rent-Charge, or his receiver, to make a new book for use, and therein to arrange the allotments with the names of the occupiers, not alphabetically, but consecutively according to the first number of the allotment of every occupier. The numbers on the map generally running regularly from one end of the parish to the other, the names of the occupiers will thus be placed in convenient order for collection. Columns may be added for a reference to the pages in the Apportionment book, the residence of the occupiers, the names of the landowners, the description of the premises and mode of cultivation, and the quantities of the land, or for such of them as may be thought useful.

82. The Rent-Charge being charged on the land, is the land-owner's burthen. The 70th section of the Tithe Act applying to rates before stated (No. 54), also infers this to be the case, as well as the 80th section (No. 99), allowing the occupier to deduct the Rent-Charge from his rent to his landlord. The clauses in the Property-Tax Act, referred to in a previous chapter (No. 58 *et seq.*), treat the Rent-Charge as the liability of the land-owner.

83. Rent (except in case of the king) is regularly due and payable upon the land from whence it issues, if no particular place is mentioned in the reservation (*Co. Litt.* 201. 2 *Bl. Comm.* 43); and therefore, and as the primary remedy for the Rent-Charge,

under the Tithe Commutation statute, is by distress on the premises, the application for payment should be made to the occupier, unless the landlord consents to pay the amount.

84. The collection may be made either by holding audits within the parish, or by application to the parties at their residences, but in either case a previous letter to them making an appointment for the payment would save trouble.

85. As allotments are often changing occupation, and parties may possess other lands than those for which application is made, it is recommended that the owner of the Rent-Charge give his receipts in respect of the particular allotments for which payment is made, and not a general receipt for the Rent-Charge to the parties paying it; as thereby the receipt will not be a discharge for, or made applicable to any allotment not intended to be included; but a minute description of the premises is unnecessary. A reference to the numbers of the allotments in the Apportionment, is the most simple, and at the same time most certain mode of identifying the premises.

86. It is also recommended where any allotment is in several occupations, that the owner of the Rent-Charge do not receive the Rent-Charge in respect of a part only of the allotment, as by discharging one part of the allotment from the residue of the apportioned Rent-Charge, it may be questionable whether the remainder of the allotment is not also discharged; at any rate, the owner of the Rent-Charge is not authorized by the Tithe Commutation

Acts, nor is he justified, in apportioning the Rent-Charge otherwise than is stated in the Apportionment.

87. By receiving a part of the Rent-Charge in discharge of a portion of the allotment, the remedies by distress and entry on the other portion of the allotment would be materially affected, in case of a refusal to pay the residue of the Rent-Charge. So moderate a distress may not be found on the portion not paid for, as on the part discharged, and which, by obliging the owner of the Rent-Charge, in enforcing payment against the portion not paid for, to distrain thereon cattle, or articles of greater value than necessary, or which may be privileged from distress unless no other distress be found, would subject him to an action. The remedy by entry might thereby be entirely defeated.

88. There can be no objection to receiving a part of the Rent-Charge on account.

89. The addition, or deduction, whichever may be the case, on account of the average prices of corn, will of course have to be made.

90. If the occupier has been suffered to pay the rates on the Rent-Charge, the amount must be deducted; but such a mode of discharging the rates of the owner of the Rent-Charge must be attended with inconvenience.

91. A deduction at the rate of 7*d.* in the pound must be made for the Property-Tax. The land-owner being assessed to the tax on the land, or having allowed it to his tenant, is, by the statute, made preliminary to his being entitled to the deduction (No.

58); but inasmuch as the deduction for Property-Tax is to be made by the owner or receiver of the Rent-Charge without any certificate of such assessment or allowance (No. 60), it may be advisable in cases of doubt, to allow the Property-Tax out of the Rent-Charge. The section in the Property-Tax Act applying to Tithe Commutation Rent-Charge, is not the same as that applying to the case of landlord and tenant. In the latter case actual payment of the tax by the tenant is made preliminary to the deduction by the landlord.—No. IV. Rule Ninth of 5 & 6 *Vic. cap.* 35.

92. As the refusal to deduct the tax subjects the receiver to a penalty of 50*l.*, with full costs, charges, and expenses of suit (No. 59), which, on an information in the Court of Exchequer, at the suit of the Crown, are of serious amount, it is advisable, in order to prevent any doubt as to the fact, that the deduction should appear on the receipt.

93. The receipt may be in the following form :—

Received , 184 , of Mr.
the sum of for half a year's Rent-Charge
due to me as Rector of on the 1st day
of October, 1848, for the lands numbered in
the [name of parish] Apportionment, after deducting
Property-Tax.

Rent-Charge . . .	
Property-Tax . . .	
	£

A. B.

The receipt may be under printed—

Occupiers paying the Rent-Charge are to be repaid the amount by their landlords, and may deduct it from their rent; excepting where their lease or agreement was made on or before the the date of the Commutation.—6 & 7 *Wm. IV. c.* 71. *s.* 80.

94. When however the Property-Tax Commissioners assess the owner of the Rent-Charge on the Rent-Charge, instead of including the apportioned Rent-Charges in the rents in the assessment on the lands, the Commissioners would no doubt object to take proceedings for refusing to deduct the tax; but such a mode of assessment, being contrary to the Act, is not binding on the parties, and when the occupier is entitled by the Property-Tax Act to the deduction, the owner of the Rent-Charge cannot safely distrain without making the deduction.

95. Where the lands in the parish are subject to extraordinary charge for hop-grounds, market-gardens, orchards, or mixed plantations of fruit and hops (No. 67, *et seq.*), the owner of the Rent-Charge, or his receiver, should also make a minute of any change of cultivation he may discover with respect thereto; in order that in the case of lands ceasing to be so cultivated he may forbear to receive, after the time limited as before mentioned, the extraordinary charge, or in case of lands newly cultivated with such produce, that the extraordinary charge may, at the proper period, be added.

96. As to Lammas lands and commons, where a Rent-Charge is put on the cattle or stock (No. 76),

it will be necessary to keep an oversight of the stock placed on the lands, for the purpose of collecting the Rent-Charge thereon as the same are turned on the commons.

SECTION II.

Of the Rent-Charge, as between the Land-owner and the Occupier.

97. Occupiers of land have not, as such, any voice in the commutation of tithes. (*sec.* 12.) It is usual in compulsory commutations for the Assistant Commissioners to hold open Courts, at which occupiers have the opportunity of attending; but they are not entitled to interfere in the proceedings.

98. If an occupier is dissatisfied, his course is under the 79th section, by which a tenant at rack-rent may, within one calendar month next after the confirmation of the Apportionment, signify to his landlord in writing his dissent from the Rent-Charge; in which case, the land-owner is to stand in the place of the owner of tithes, and to be at liberty to enforce the tithes accordingly.

99. Tenants or occupiers who pay the Rent-Charge are entitled to deduct the amount from the rent payable to their landlords, or be allowed the same in account with them in the following cases:—

Any tenant or occupier at the time of the commutation, who shall signify his dissent from being bound to pay the Rent-Charge, or who shall hold his lands under a lease or agreement, providing that the same shall be held by him free of tithes.

And every tenant or occupier who shall occupy any lands by any lease or agreement made subsequently to the commutation.—*sec.* 80.

100. Occupiers who shall pay the rates on the Rent-Charge, are to deduct the amount from their rent as before stated. (Nos. 54 and 55.)

101. It is now, however, usual for occupiers to agree with their landlords to bear and pay the Rent-Charge; but where this is the intention of the parties, the agreement should extend "to a proportion for the time which shall have elapsed of the current half-year at the expiration of the tenancy;" as otherwise there may be some doubt whether if a tenancy expire, for instance, on the 25th of March, and the half-year's Rent-Charge become due on the 1st of April, the tenant would be compellable to pay any part of that half-year's Rent-Charge.

102. On the other hand, the tenant, before entering into an agreement to pay the Rent-Charge, should ascertain that the land he is about to rent, is not included with other lands in one amount of Rent-Charge; cases frequently occurring of occupiers taking a small parcel of land, and being called on for the Rent-Charge payable for a large field; or on taking one or two fields, being compelled to pay the Rent-Charge of a whole farm: he should also ascertain that the Rent-Charge is paid up to the time of his taking possession, or stipulate that an allowance be made in respect of it, in case he is called on for the payment.

103. In all cases of purchases of lands, an inquiry as to the amount of the Rent-Charge upon them, and

whether they are included with other premises in the Charge, should be made; and the last receipt for the Rent-Charge should be required to be produced by the vendor.

CHAPTER V.

THE CLAUSES IN THE TITHE COMMUTATION ACTS FOR THE RECOVERY OF ARREARS OF RENT-CHARGE.

THE clauses in the Tithe Commutation Acts relating to the remedies for enforcing payment of the Rent-Charge being important, and the principal object of the present book, they will be given fully. They are the following:—

6 & 7 *William IV. c.* 71.

104. *Lands to be discharged from tithes, and Rent-Charge paid in lieu thereof.*

Sec. 67. And be it enacted, that from the 1st day of January next following the confirmation of every such Apportionment [see *ante*, Nos. 63, 64, 65], the lands of the said parish shall be absolutely discharged from the payment of all tithes, except so far as relates to the liability of any tenant at rack-rent dissenting, as hereinafter provided, and instead thereof there shall be payable thenceforth to the person in that behalf mentioned in the said Apportionment, a sum of money equal in value according to the prices ascertained by the then next preceding

advertisement, to the quantity of wheat, barley, and oats respectively mentioned therein, to be payable instead of the said tithes [see No. 33], in the nature of a Rent-Charge issuing out of the lands charged therewith; and such yearly sum shall be payable by two equal half-yearly payments on the 1st day of July, and the 1st day of January in every year, the first payment, except in the case of barren reclaimed lands, as hereinafter provided, being on the 1st day of July next, after the lands shall have been discharged from tithes as aforesaid [see Nos. 64, 65], and such Rent-Charge may be recovered at the suit of the person entitled thereto, his executors or administrators, by distress and entry, as hereinafter mentioned; and after every 1st day of January, the sum of money thenceforth payable in respect of such Rent-Charge, shall vary so as always to consist of the price of the same number of bushels and decimal parts of a bushel of wheat, barley, and oats respectively, according to the prices ascertained by the then next preceding advertisement; and any person entitled from time to time to any such varied Rent-Charge, shall have the same powers for enforcing payment thereof as are herein contained concerning the original Rent-Charge: Provided always, that nothing herein contained shall be taken to render any person whomsoever, personally liable to the payment of any such Rent-Charge.

105. *When Rent-Charge is in arrear for twenty-one days after half-yearly days of payment, the person entitled thereto may distrain.*

Sec. 81. And be it enacted, That in case the said

Rent-Charge shall at any time be in arrear and unpaid for the space of twenty-one days next after any half-yearly day of payment, it shall be lawful for the person entitled to the same, after having given or left ten days' notice in writing at the usual or last known residence of the tenant in possession, to distrain upon the lands liable to the payment thereof, or on any part thereof, for all arrears of the said Rent-Charge, and to dispose of the distress when taken, and otherwise to act and demean himself in relation thereto as any landlord may for arrears of rent reserved on a common lease for years; provided that not more than two years' arrears shall at any time be recoverable by distress.

106. *When Rent-Charges are in arrear for forty days after half-yearly days of payment, and no sufficient distress on the premises, writ to be issued, directing sheriff to summon jury to assess arrears.*

Sec. 82. And be it enacted, That in case the said Rent-Charge shall be in arrear and unpaid for the space of forty days next after any half-yearly day of payment, and there shall be no sufficient distress on the premises liable to the payment thereof, it shall be lawful for any judge of His Majesty's Courts of Record at Westminster, upon affidavit of the facts, to order a writ to be issued, directed to the sheriff of the county in which the lands chargeable with the Rent-Charge are situated, required the said sheriff to summon a jury to assess the arrears of Rent-Charge remaining unpaid, and to return the inquisition thereupon taken to some one of His Majesty's courts of law at Westminster, on a day therein to be

named, either in term time or vacation; a copy of which writ, and notice of the time and place of executing the same, shall be given to the owner of the land, or left at his last known place of abode, or with his known agent, ten days previous to the execution thereof; and the sheriff is hereby required to execute such writ according to the exigency thereof; and the costs of such inquisition shall be taxed by the proper officer of the court; and thereupon the owner of the Rent-Charge may sue out a writ of habere facias possessionem, directed to the sheriff, commanding him to cause the owner of the Rent-Charge to have possession of the lands chargeable therewith, until the arrears of Rent-Charge found to be due, and the said costs, and also the costs of such writ, and of executing the same, and of cultivating and keeping possession of the lands, shall be fully satisfied: Provided always, that not more than two years' arrears over and above the time of such possession shall be at any time recoverable.

107. *Account, how to be rendered.*

Sec. 83. And be it enacted, That it shall be lawful for the court out of which such writ shall have issued, or any judge at chambers, to order the owner of the Rent-Charge who shall be in possession by virtue of such writ, from time to time to render an account of the rents and produce of the lands, and of the receipts and payments in respect of the same, and to pay over the surplus (if any) to the person for the time being entitled thereunto, after satisfaction of such arrears of Rent-Charge and all costs and expenses as aforesaid, and thereupon to order a writ of superse-

deas to issue to the said writ of habere facias possessionem, and also by rule or order of such court or judge from time to time to give such summary relief to the parties, as to the said court or judge shall seem fit.

108. *For recovery of Rent-Charges from Quakers.*

Sec. 84. Provided always, and be it enacted, That in all cases in which it shall be necessary to make any distress under this Act in respect of any lands in the possession of any person of the persuasion of the people called Quakers, the same may be made upon the goods, chattels, or effects of such person, whether on the premises or elsewhere, but nevertheless to the same amount only, and with the same consequences in all respects as if made on the premises; and that in all cases of distress, under this Act, upon persons of that persuasion, the goods, chattels, or effects which may be distrained, shall be sold without its being necessary to impound or keep the same: Provided always, that no writ under the provision hereinbefore contained, shall be issued for assessing or recovering any Rent-Charge payable under this Act, in respect of any lands in the possession of any person of the persuasion aforesaid, unless the same shall be in arrear and unpaid for the space of forty days next after any half-yearly day of payment, without the person entitled thereto being able to find goods, chattels, or effects, either on the premises or elsewhere, liable to be distrained as aforesaid, sufficient to satisfy the arrears to which such lands are liable, together with the reasonable costs of such distress.

109. *Powers of distress and entry to extend to all lands within the parish occupied by the owner, or under the same landlord or holding.*

Sec. 85. And be it enacted, That whenever any Rent-Charge payable under the provisions of this Act shall be in arrear, notwithstanding any Apportionment which may have been made of any such Rent-Charge, every part of the land situate in the parish in which such Rent-Charge shall so be in arrear, and which shall be occupied by the same person who shall be the occupier of the lands on which such Rent-Charge so in arrear shall have been charged, whether such land shall be occupied by the person occupying the same as the owner thereof, or as tenant thereof, holding under the same landlord under whom he occupies the land on which such Rent-Charge so in arrear shall have been charged, shall be liable to be distrained upon or entered upon as aforesaid for the purpose of satisfying any arrears of such Rent-Charge, whether chargeable on the lands on which such distress is taken, or such entry made, or upon any other part of the lands so occupied or holden: Provided always, that no land shall be liable to be distrained or entered upon for the purpose of satisfying any such Rent-Charge charged upon lands which shall have been washed away by the sea, or otherwise destroyed by any natural casualty.

2 & 3 *Victoria, c.* 62.

110. *Rent-Charge in respect of tithes of common appurtenant, to be a charge on the allotments made in respect of the lands to which right of common attached.*

Sec. 14. And whereas in certain cases of commons hereafter to be inclosed, allotments may be made in respect of tenements and hereditaments to which a right of going on such common is appendant or appurtenant, the tithes whereof would be chargeable on the tenements or hereditaments in respect of which such allotments may be made, and such tenements or hereditaments are not of themselves an adequate security for the Rent-Charge to be fixed in respect of such tithes; Be it therefore declared and enacted, That in every such case the Rent-Charge to be fixed instead of such tithes, shall be a charge upon and recoverable out of any allotments to be in future made in respect of such rights, as well as upon such tenements or hereditaments, in respect of which such allotments are made, and by the same ways and means as are provided for the recovery of Rent-Charges by the said Acts, or any of them, or this Act.

5 & 6 *Victoria, c.* 54.

111. *Power to owner of Rent-Charge to let land taken under writ of possession.*

Sec. 12. And be it enacted, That it shall be lawful for any owner of Rent-Charge, having taken possession of any land for non-payment of the Rent-Charge under the provisions of the first recited Act, from time to time during the continuance of such possession, to let such land, or any part thereof, for any period not exceeding one year in possession, at such rent as can be reasonably obtained for the same; and the restitution of such land on payment or satisfaction of the

Rent-Charge, costs, and expenses shall be subject and without prejudice to any such tenancy.

112. *Remedy for enforcing payment of contribution to Rent-Charge.*

Sec. 16. And be it further enacted, That in case any land charged with one amount of Rent-Charge shall belong to two or more land-owners in several portions, and the owner of any one of such portions, or his tenant, shall have paid the whole of such Rent-Charge, or any portion thereof greater than shall appear to him to be his just proportion, and contribution thereto shall have been refused or neglected to be made by any other of the said land-owners, or his tenant, after a demand in writing made on them, or either of them, for that purpose, it shall be lawful for any justice of the peace acting for the county, or other jurisdiction in which the land is situated, upon the complaint of any such land-owner, or his tenant or agent, to summon the owner so refusing or neglecting to make contribution, or his tenant, to appear before any two or more such justices of the peace, who, upon proof of the demand and of service of the summons, as hereinafter provided, whether or not the party summoned shall appear, shall examine into the merits of the complaint, and determine the just proportion of the Rent-Charge so paid as aforesaid, which ought to be contributed by the land-owner of such other portion of the said land, and by order under their hands and seals shall direct the payment by him of what shall in their judgment be due and payable in respect of such liability to contribution, with the reasonable costs and charges of such pro-

ceedings, to be ascertained by such justices; and thereupon it shall be lawful for the complainant to take the like proceedings for enforcing payment of the said amount of contribution and costs, and with the like restriction as to the arrears recoverable, as are given to the owner of the Rent-Charge by the said first-mentioned Act, or this Act for enforcing payment of the Rent-Charge.

113. *Service of summons, &c.*

Sec. 17. And be it enacted, That service of the said demand in writing and summons, or of any notice to distrain, or copy of writ to assess the arrears of Rent-Charge, or notice of the execution thereof under the first-recited Act, or the several Acts to amend the same, or this Act, upon any person occupying or residing on the land chargeable with the Rent-Charge, or in case no person shall be found thereon, then affixing the same in some conspicuous place on the land, shall be deemed good service of any such summons, writ, or other proceeding.

114. *Provision for general avowry in actions of replevin for Rent-Charge.*

Sec. 18. And be it enacted, That it shall be lawful for all defendants in replevin, brought on any distress for Rent-Charge payable under the said first-recited Act, or the several Acts to amend the same, or this Act, to avow or make cognizance generally, that the lands and tenements whereon such distress was made were chargeable with and liable to the payment of a certain yearly amount of Rent-Charge under the provisions of the statutes for the Commutation of Tithes in England and Wales, which Rent-Charge, or

some part thereof, was in arrear and unpaid for the space of twenty-one days next after some half-yearly day of payment thereof, and after ten days' notice in writing, as required by the said Acts, and that a certain amount of such Rent-Charge, according to the prices of corn, as directed by the said Acts, was at the time of the said distress due to the person entitled to the Rent-Charge.

115. *Irregularity not to vitiate proceedings.*

Sec. 19. And be it enacted, That where any distress shall be made for any Rent-Charge payable under the said recited Acts, or any of them, or this Act, and justly due, and any irregularity or unlawful act shall be afterwards done by the party distraining, or his agent, in the conduct, sale, or disposition of the distress, the distress itself shall not be therefore deemed to be unlawful, nor the party making it deemed a trespasser from the beginning, but the party aggrieved by such unlawful act, or irregularity, may recover full satisfaction for the special damage in an action upon the case; Provided, nevertheless, that no plaintiff shall recover in any action for any such unlawful act or irregularity, if ten days' notice in writing shall not have been given to the defendant by the plaintiff of his intention to bring such action before the commencement thereof, or if tender of sufficient amends has been made by the party distraining, or his agent, before such action brought, or if after action brought a sufficient sum of money shall have been paid into court, with costs, by or on behalf of the defendant.

116. By the 5 & 6 *Vic. c.* 97. *s.* 4, In all cases where notice of action is required, such notice shall

be given one calendar month at least before such action shall be commenced, and such notice of action shall be sufficient, any Act or Acts to the contrary thereof notwithstanding.

7 & 8 *Victoria c.* 85.

117. *Remedy for recovery of tithe Rent-Charge, charged on railway-land.*

Sec. 22. And whereas the remedies now in force for the recovery of Tithe Commutation Rent-Charge, are in many instances ineffectual for such parts thereof as are charged upon lands taken for the purposes of a railway, and it is therefore expedient to extend the said remedies, when the said Rent-Charges may have been duly apportioned; Be it enacted, That in all cases in which any such Rent-Charge or part of any Rent-Charge has been or hereafter shall be duly apportioned, under the provisions of the Acts for the Commutation of Tithes in England and Wales, upon lands taken or purchased by any Railway Company for the purposes of such Company or upon any part of such lands, it shall be lawful for every person entitled to the said Rent-Charge or parts of such Rent-Charge, in case the same has been or shall be in arrear and unpaid for the space of twenty-one days next after any half-yearly day fixed for the payment thereof, to distrain for all arrears of the said Rent-Charge upon the goods, chattels, and effects of the said Company, whether on the land charged therewith, or any other lands, premises, or hereditaments of such Company, whether situated in the same parish or elsewhere,

and to dispose of the distress when taken, and otherwise to demean himself in relation thereto, as any landlord may for arrears of rent reserved on a lease for years: Provided always, that nothing therein contained shall give or be construed to give a legal right to such Rent-Charge, when but for this Act such Rent-Charge was not and could not be duly apportioned.

CHAPTER VI.

OF THE PROVISIONS AS TO DISTRESS.

SECTION I.

Of the ten days' notice of distress. See No. 105.

118. *The notice is to be given in writing.* Wherever notice is required to be given in writing, printing is obviously included; the expression is not used with reference to the mode of impressing the paper with ink, but in contradistinction to verbal or oral notice.

119. *The person entitled to the arrears of Rent-Charge having given.* The notice is to emanate from him; it may, and should be served by some other party, in order to prove the service, if necessary. The notice should be signed by the owner of the Rent-Charge; or if signed by an agent for him, such agent should be authorized in writing to do so, and a copy of the authority should be served with the notice. It is said that the authority should be made under seal, but this does not appear requisite.

120. The person entitled includes the executors and administrators of a deceased person.—*Sec.* 67 *of Tithe Act*, No. 104.

121. *After ten days' notice.* The space of twenty-one days after the half-yearly day of payment seems to refer to the time of making the distress; the past participle, "having given or left," being used, the notice, it is conceived, may be given within the twenty-one days. The 18th section of the last statute (No. 114) seems to confirm this view.

122. *Given or left at the usual or last known residence of the tenant in possession.* The requisition is clear, although it may read harsh. The notice may be given to the tenant in possession personally, or it may be left at his residence. In the latter case it should be served on one of the household, such as wife, son, or daughter, or domestic servant, &c. Service on a mere journeyman, for instance, would hardly be sufficient. Service at the place of business, not being also the residence of the tenant, would be insufficient.

123. By the 17th *Sec.* of the 5 & 6 *Vic. cap.* 54. (No. 113) the service of any notice to distrain upon any person occupying or residing on the land chargeable with the Rent-Charge, or, in case no person shall be found thereon, then the affixing the same on some conspicuous place on the land shall be deemed good service. The words "occupying or residing" would, of course, apply to the tenant, or any one living and sleeping on the premises.

124. Where there is any difficulty or doubt in effecting the service of the notice, it would be well to

leave or affix a copy on the premises, in addition to the service on the party, or at his residence.

125. The person serving the notice should ascertain on whom he serves it, whether wife, or servant, &c., and if he can, obtain the name, and make a memorandum of the service on a copy of the notice.

126. The party to prove the service of the notice should take no part in making the distress, lest, by being made a defendant, his evidence should be rendered inadmissible.

127. Under the original Act, if the land is in several occupations, notice should be given to each occupant, or, at the least, to the occupant of the part of the premises on which it is intended to distrain; but this seems unnecessary where the service is made under the last Act; yet it would be harassing to give notice to one tenant, and to distrain on another.

128. *To distrain upon the lands, &c.* The notice it would seem should ride over the whole clause, except the short proviso at the end; but, as no form is given, it is sufficient, it is conceived, to give notice of the steps intended to be taken by the owner of the Rent-Charge, by any words which express clearly such intention. It may be better to adopt the words of the Act as far as "common lease for years."

129. A question may be suggested, whether the notice should be in these general terms, or more specific, as whether it should state for what period the arrears are due; but this must be unnecessary, it not being required to be stated in making the distress.

130. Again, whether it should state the amount due. It is conceived that, as the occupier has the

same means of ascertaining the sum in arrear as the owner of the Rent-Charge, the amount need not be mentioned; but where there is no doubt as to the sum, it would be more convenient, if not safer, to state the amount and up to what time due. When the notice sets forth the amount of arrears, it should agree with the sum for which the distress is made.

131. There can be no necessity to mention in the notice the time when the distress will be made. The object of the notice is that it should operate as a demand of the Rent-Charge, in like manner as the ten days' notice of the justices' adjudication did, with respect to tithes, and no other demand of the Rent-Charge seems necessary.

132. In the case of distraining cattle charged per head on Lammas lands or commons, no previous notice is required.—No. 77.

133. *Form of Notice.*

To Mr. , and whom else it may concern.

By virtue of the statute of the 6 & 7 William IV. cap. 71, entitled "An Act for the Commutation of Tithes in England and Wales," I hereby give you notice, that after ten days from the service hereof, I intend to distrain upon the lands and premises, numbered in the Apportionment of the Rent-Charge of the parish of , in the county of , for the arrears of Rent-Charge, to which the same are liable to me as *Rector* of the said parish, amounting to the sum of £ up to the 1st day of last, and to dispose of the distress when taken, and otherwise to act and demean myself in relation thereto as any landlord may for arrears of rent

reserved on a common lease for years. Dated this day of 1849.

A. B.

Instead of the latter part of the notice, from the words "and to dispose," the words "and to proceed therein according to the said statute," may be substituted.

134. If the tenant holds more than one allotment, and it is necessary or intended to make several distresses, say,

"to distrain upon the lands and premises numbered in the Apportionment of the Rent-Charge of the parish of in the county of , severally and respectively, for the arrears of Rent-Charge, to which the same are respectively liable to me as *Rector* of the said parish, amounting together to the sum of £ up to the 1st day of last, viz:—

No. . . . . £
No. . . . . £
No. . . . . £

and to dispose," &c.

Or separate notices may be given.

135. *Another form of notice.*

To the tenant [or tenants] in possession of the lands and premises numbered in the Apportionment of the Rent-Charge of the parish of in the county of .

By virtue of the statute of the 6 & 7 William IV. cap. 71, entitled "An Act for the Commutation of Tithes in England and Wales," I hereby give you notice, that

after ten days from the service hereof I intend to distrain upon the lands and premises above referred to, for the arrears of Rent-Charge to which the same are liable to me as *Rector* of the said parish, amounting to the sum of £ , up to the 1st day of last, and to dispose of the distress when taken, and otherwise to act and demean myself in relation thereto as any landlord may for arrears of rent reserved on a common lease for years. Dated this day of 1849.

A. B.

If signed by an agent, the signature should be
A. B.
by C. D. by power of attorney.
[or, by written authority.]

136. *Form of Power of Attorney to receive and enforce payment of the Rent-Charge.*

To all to whom these presents shall come. The Reverend A. B. *Rector* of the parish of in the county of , sends greeting, Whereas the said A. B., as *Rector* of the said parish, is entitled to the Rent-Charge payable in lieu of tithes to the *Rector* of the said parish of , for the several lands in the said parish liable thereto from the day of the death [or "resignation"] of , the late *Rector* of the said parish [or "from the commencement of the said Rent-Charge"]; Now these presents witness, that he the said A. B. doth hereby make, constitute, and appoint, and in his place depute C. D. of in the county of , gentleman, his true and lawful attorney, for him and in his name to ask, demand, and receive on the several lands liable to the payment of the said Rent-Charge respectively, or of any person or persons to whom it doth or may belong to pay

the same respectively all and every sums and sum of money now due, or which shall, or may become due to him the said A. B. for the said Rent-Charge; And also for him and in his name to give to the tenant or tenants in possession of the said lands respectively, or to any other person or persons as may be necessary, or to affix on the said lands respectively any notice or notices which is, are, or may be required by the statutes for the Commutation of Tithes in England and Wales, previous to distraining for the said Rent-Charge now due or to become due as aforesaid; And also for him and in his name to make all such distress or distresses for all arrears of the said Rent-Charge now due, or to become due as aforesaid, and to dispose of the same when taken, and otherwise to act and demean himself on behalf of the said A. B. in relation thereto, as he the said A. B. may do by virtue of the said statutes or otherwise; And also for him and in his name to take all such proceedings for assessing the arrears of the said Rent-Charge, and for recovering possession of the lands chargeable therewith respectively, pursuant to the said statutes and otherwise, as may be necessary for enforcing payment of the same; And also for him and in his name or on his behalf to receive and keep possession of the said lands when recovered, and to cultivate the same or to let the same under the said statutes, and to receive and pay any sum or sums of money in respect of the same as may be requisite or proper until thereout or otherwise the said arrears with the costs shall be fully satisfied; And also for him and in his name to do, take, give, and pursue all such acts, matters, things, notices, and remedies as may be necessary or requisite by virtue of the said statutes or otherwise for demanding, recovering, and receiving the said Rent-Charge, and every or any part thereof or incidental

thereto; And also for him and in his name or on his behalf upon payment of the said Rent-Charge or any part or parts thereof, from time to time, to sign or give any receipts or discharges for the same respectively, as may be proper in that behalf; and also for all or any of the purposes aforesaid, to appoint and authorize any collector or collectors, broker or brokers, or other person or persons to make or do any of the acts, matters, or things aforesaid, and generally for him and in his name to do and perform or cause or procure to be done and performed all and whatsoever shall be requisite in the premises, as fully and effectually as the said A. B. might or could do the same if personally present, he the said A. B. hereby giving and granting unto his said attorney his full and whole power and authority herein and hereby covenanting to allow, ratify, and confirm all and whatsoever he shall or may lawfully do or cause to be done therein by virtue of these presents. In witness whereof he the said A. B. hath hereunto set his hand and seal, this day of 1849.

SECTION II.

Of the power of distress. *See No.* 105.

137. *In case the Rent-Charge be in arrear for twenty-one days after the day of payment, after ten days' notice.* The twenty-one days refers to the time of making the distress. (No. 121.) The Rent-Charge becoming due on the 1st, the distress cannot be made until the 23rd of the month, the default not being complete until midnight of the 22nd. The ten days' notice must also have expired; if given on the 15th the distress may be made on the 26th.

138. *The person entitled.* The expression evidently applies to every one in whom the Rent-Charge becomes legally vested. The executors and administrators of the person entitled are expressly included. (No. 104.)

139. In the case of landlord and tenant, the right of distress for rent reserved is incidental to the tenancy (No. 2), and at common law depended on the continuation of it; but by statute, executors or administrators may in some cases distrain for rent accrued due in the lifetime of the deceased landlord; and, by another statute, a landlord may distrain after the determination of the lease, provided the distress be made within six calendar months after the determination, and during the continuance of the landlord's interest and the possession of the tenant. But if the landlord convey the property to another, he cannot afterwards distrain for arrears of rent accrued before the conveyance, the relation of landlord and tenant not subsisting.

140. The right of distress, however, under the Tithe Acts, does not depend on any feudal relation of the parties, but on the powers given by the Acts; and the only qualification required by them is, that the party be the person entitled to the arrears, that is, in whom they are vested at law; an equitable title only would not, it is conceived, justify the distress.

141. It may here be observed that the primary remedy for the recovery of rent reserved on a demise, is by action against the tenant on the reservation, or by distress. As the power of entry in such case is auxiliary to the primary remedy, and the loss of the

right of entry does not deprive the party of such his primary remedy, and as the law is said to abhor forfeitures, such conditions of re-entry by landlords receive a strict interpretation. (*Doe* v. *Marchette*, 1 *B. & Ad.* 720.) So in the case of a Rent-Charge created by deed or grant, the primary remedy is by action against the grantor or his representatives on the grant as a contract, and the powers of distress and entry in such case are auxiliary remedies; these, therefore, and as innocent tenants ignorant of the incumbrance may be affected by them, also are strictly interpreted. *Miller* v. *Green, in error*, 8 *Bingham*, 107.

142. But with respect to the powers of distress and entry for recovery of Tithe Commutation Rent-Charge, the Tithe Commutation Act may be considered a remedial statute. They are the only remedies provided by the Act, no person being personally liable. Tithes, or Tithe Rent-Charge, are well known general burthens on land; and although the latter is to be borne by the land-owner, yet it is payable by the tenant in the first instance, who has the means of reimbursement by deduction from his rent. There can, therefore, be no hardship on the occupier in being forced to pay the charge; and, in case of entry, the owner of the Rent-Charge holds the lands until out of the rents and produce his claim is satisfied, and not absolutely, as in the case of a forfeiture; for these reasons the clauses of the statute for enforcing the payment of the Rent-Charge ought to receive a liberal interpretation. In the instances in which they have hitherto come

before the courts, or the judges at chambers, they have been thus construed.

143. *To distrain, &c.* It may be enquired whether the words, "as any landlord may," &c., apply to the words "to distrain," as well as to the words "to dispose," and "to act and demean himself." At common law, some things, as will be seen, were not distrainable, but which by statute a landlord may distrain for arrears of rent. So at common law he could only take the distress as a pledge until payment, but which he is by statute authorized to dispose of in satisfaction of the rent and costs. Does the expression therefore apply to the statutes authorizing a landlord to distrain things not before distrainable, as well as to the statutes for the disposal of the distress; or to the latter statutes only?

144. In the case of *Miller* v. *Green, in error*, 8 *Bingham*, 107, where G. T. granted an annuity to W. H. with a power, in case the annuity should be in arrear, to enter upon the premises and distrain, "and the distress and distresses then and there found, to detain, manage, sell, and dispose of, in the same manner in all respects as distresses for rents reserved upon leases for years might, were, and ought to be detained, managed, sold, and disposed of, and as if the annuity was a rent reserved upon a lease for years," it was held that standing crops could not be taken. Tindal C. J. delivered the judgment of the court as follows: "Although, however, the defendant below had a right to distrain for the arrears of his Rent-Charge, yet upon the due consideration of the power of distress contained in

the deed, we think it did not extend to the growing and standing crops which have been taken under it. At common law it is well known that distresses taken for rent arrear were not saleable, but could only be kept as a pledge for the rent; but by the statute 2 *W. & M.*, goods and chattels, distrained for rent due under a contract may be kept and sold in the manner pointed out by that statute. It was not until 11 *Geo. II. c.* 19, that landlords had power to distrain corn, grain, or other growing crops on the land demised. The grantee of the Rent-Charge is empowered by the deed to detain, manage, sell, and dispose of the distresses, in the same manner in all respects as distresses for rents reserved upon leases for years, and as if the said annuity was a rent reserved upon a lease for years, and we think that these words are fully satisfied by holding them to grant the powers which were given to landlords under the statute of *W. & M.*, without extending them to the new subjects of distress first pointed out by the statute of *Geo. II.* A power like the present ought at all times to be construed strictly, and more especially when it is sought to bring within it the growing crops of a person who is a stranger to the deed."

145. It will be observed that the wording of the clause referred to in this case may be fully satisfied without applying them to the former part of it, the power to distrain. The reasons given by the Chief Justice in his judgment do not apply to Tithe Commutation Rent-Charge.

146. But where the grantee of an annuity charged by deed on certain premises, was empowered in case

the annuity should be unpaid for twenty days, to enter upon the premises and distrain, and the distresses there found to take, seize, lead, drive, carry away, and impound, detain, and keep, and sell, and dispose of the same, in the same manner as the law directs in cases of rent in arrear, it was held by the Court of Queen's Bench, that the grantee might under this power distrain hay and corn in the stack, *Johnson* v. *Faulkner*, 2 *Gale. & D.* 184. 6 *Jur.* 832. 2 *Ad. & E., N. S.* 925.

147. To give due effect to the section in the Tithe Act, the power of the landlord to distrain must be considered as conferred on the owner of the Rent-Charge, as well as that of disposing of the distress. This will lead us in a subsequent chapter to consider a landlord's powers relating to distresses for rent.

148. *Upon the lands liable to the payment thereof, or on any part thereof.* The lands liable to the payment are—The lands identified by the number on the Apportionment and Plan, as chargeable with the apportioned amount. Nos. 10 & 32.

149. But all land in the parish occupied by the same person as shall occupy the lands on which the Rent-Charge is in arrear, whether occupied by him as the owner thereof, or as tenant holding under the same landlord as he holds the land in arrear, is made liable to the distress. (No. 109.)

150. If an allotment be held by A and B jointly, or in separate portions, and the Rent-Charge is in arrear, a doubt may arise whether the distress may be made on other land held by either of them singly, as owner, or as holding under the same landlord; and

until there is a decision on the point, it would not be safe to venture an opinion on it. If the case be the converse, the allotment in arrear being held by one of them only, it is clear that a distress cannot be made on land held by them jointly.

151. But no land shall be liable to be distrained upon for Rent-Charge charged upon lands which shall be washed away by the sea, or otherwise destroyed by any natural casualty. (No. 109.) If a portion of an allotment be thus lost, the owner of the land should procure a reapportionment.

152. Where part of the land is lost by the act of Providence, the lessee may insist on an Apportionment of the rent: thus, if the sea break in and overflow a part of the land, the rent will be apportioned, for though the soil remains to the tenant, yet as the sea remains open to every one, he has no exclusive right to fish there; for which reason a distinction is made between the sea and fresh water, because, though the land be covered with fresh water, the right to taking the fish is vested exclusively in the lessee, and consequently the rent will not be apportioned.—1 *Roll. Abr.* 236. 46. *Mathew's Landlord and Tenant*, 97.

153. The land being uncultivated and untenanted merely, does not excuse it from the Rent-Charge.—See *Newling* v. *Pearse*, 1 *B.* & *C.* 437—3 *E.* & *Y.* 1094.

154. Allotments made after the Commutation, in respect of rights of common, are liable to be distrained on for Rent-Charge fixed on tenements or hereditaments, to which such rights of common are

appendant or appurtenant. See the enactment fully stated No. 110.

155. Any part of the land charged with the payment is liable to the distress. This would be so without the express provision, and where the land is held by several tenants, the owner of the Rent-Charge may distrain for the whole arrears on any one of them the Rent-Charge issuing out of every part of the land. —1 *Roll. Abr. Distress m.* 671. 2. *Com. Dig. Debt. A* 3.

156. With respect to Quakers, the distress may be made on the goods of such persons, whether on the premises or elsewhere. There can be no doubt that if a Quaker holds only a portion of an allotment, his goods elsewhere may be distrained for the arrears of Rent-Charge of the whole allotment, the statute providing expressly, "but to the same amount only, and with the same consequences in all respects as if made on the premises." No. 108.

157. In the case of Rent-Charge charged on land taken for a railway, the goods, chattels, and effects of the Company may be distrained, whether on the lands charged therewith or any other lands of the Company, whether in the same parish or elsewhere. No. 117.

158. *For all arrears of the said Rent-Charge.* A distress may be made in the event of the Rent-Charge being in arrear twenty-one days for all arrears. Suppose, therefore, where the Rent-Charge is payable on the 1st April and 1st October, that there is one year due on 1st October, a distress may be made on the 2nd for the whole year's arrear, if the ten days'

notice be sufficient to cover it, without waiting until the twenty-one days expire of the second half year. No. 114.

159. *Not more than two years recoverable.* To secure the owner of the Rent-Charge from loss, the distress must be made before the fifth payment becomes due. This provision is similar to that in the Acts for recovering of Tithes before Justices of the Peace.

160. It is usual to permit Quakers to run three or four half years in arrear, who in return generally afford great facility in making the levy, by producing plate of sufficient value. But to do justice to these occupiers, the owner of the Rent-Charge should see to their having the value of their silver, which is at the present price about 4*s.* 11*d.* per ounce, and not leave them to the price the broker may be induced to set upon it.

161. The owner of the Rent-Charge should not permit his claim, however small, to go without payment for an unlimited time, lest in the case of an impropriation, he lose his right to it, or in the case of a parson, he injure his successors. The right is clearly defined in the Commutation, and the means of enforcing it are complete and stringent, and there can, therefore, be no ground for placing the property in jeopardy.

CHAPTER VII.

OF THE REMEDY BY DISTRESS FOR RENT BY A LANDLORD, SO FAR AS IT APPLIES TO TITHE COMMUTATION RENT-CHARGE.

SECTION I.

Of the nature of a distress in general.

162. A distress is the taking of a personal chattel out of the possession of the wrong doer into the custody of the party injured, to procure a satisfaction for the wrong committed. The thing itself taken by this process, as well as the process itself, is in our law books very frequently called a distress. The most usual injury for which a distress may be taken, is that of non-payment of rent.—3 *Bl. Comm.* 6.

163. The proceeding by distress is not an action, but a remedy without suit.

164. The common injunction to restrain proceedings at law does not extend to stay distress for rent, because it may be stopped by replevin.—*Hughes* v. *Ring*, 1 *Jac. & Wal.* 392.

165. The law of distress, however, comprehends so many particulars of an intricate nature, being dependent not only on the feudal relations at common law, but also on the provisions of several statutes both ancient and modern, that to conduct the pro-

ceeding with regularity, an acquaintance with the legal principles applying to the subject is indispensable. Without great care a party distraining may render himself liable to an action for damages.

There is at the present day a leaning in favour of a debtor against his creditor, and the feelings of a jury, in the event of a mistake, are easily excited against the distrainer, the more especially as there is little difficulty in presenting a case of distress as one of great hardship where none whatever exists. The mere circumstance that a landlord may distrain without going through the ordinary process of an action, is often alleged against him as an offence, it not being considered that so arbitrary a proceeding is not of his creating, but that of the law; and were a landlord to proceed at law, and put his tenant to considerable expense before issuing execution, when he may at once distrain, he would be acting much more harshly towards his tenant. A person making a distress should therefore not only be acquainted with the law on the subject, but should also be careful to have evidence of the regularity of his proceedings, especially in the case of Tithe Commutation Rent-Charge, where the non-payment mostly arises from an indisposition to public or general burthens, and the party distrained on has both the will and the means to take advantage of any circumstance he may be able, and to harass the owner of the Rent-Charge.

It is not here intended, however, to treat of the law of distress further than it applies to Tithe Commutation Rent-Charge.

SECTION II.

When the distress may be made.

166. The making a distress being considered in itself as a legal demand of the rent, no other demand is generally requisite, unless there be a reservation requiring a special demand. The ten days' notice required by the Tithe Commutation Act, (No. 105,) may be considered the demand of the Rent-Charge, and no other demand appears to be necessary.

167. A distress cannot be made for rent in general before the next day after the rent is due.—*Co. Litt.* 47 *b.* For Tithe Commutation Rent-Charge, it must be after ten days' notice, and after twenty-one days of the Rent-Charge being in arrear. (No. 105.)

168. The distress must not be made after tender of the rent, and even if a tender of rent and costs is made after the distress, but before impounding, the party would not be justified in detaining the property.—*Carpenter's Case*, 8 *Co. Rep.* 147 *a.*; 2 *Inst.* 107. Tender after the distress is impounded in a public pound is insufficient.—5 *T. R.* 432. *Evans* v. *Elliott*, 5 *A. & E.* 142. *Ladd.* v. *Thomas*, 4 *Perry & D.* 9. *Ellis* v. *Taylor*, 8 *Mee. & W.* 415. *West* v. *Nibbs*, 17 *L. J. C. B.* 150. 4. *C. B.* 172.

169. If a distress was too little where sufficient distress was to be had, a man could not at common law distrain again, but by the statute 17 *Car.* II., *c.* 7. *s.* 4, where the value of the cattle distrained shall not be found to be the full value of the arrears distrained for, the party to whom such arrears are

due, his executors or administrators, may distrain again for the residue.

170. But a person is not to split an entire sum, and distrain for part of it at one time and part at another.—*Hutchins* v. *Chambers*, 1 *Burr.* 579. So a second distress was held unjustifiable, because both distresses were for the same rent, and it was the lessor's folly he did not take a sufficient distress at first.—*Wallis* v. *Savill*, *Lutw.* 1532.

171. If a man seize for the whole sum, and only mistake the value of the goods seized, which may be of uncertain value, such as pictures, &c., there is no reason why he should not make a second distress.—*Hutchins* v. *Chambers*, *supra.*

172. After a distress of goods of sufficient value to satisfy arrears of rent has been made and abandoned without any cause or excuse, a second distress for the same arrears of rent is illegal.—*Dawson* v. *Cropp* 14, *Law. J.*, *N. S. C. P.* 281. 9 *Jur.* 944.

173. The distress for rent must be made in the day time, that is, between sunrise and sunset, for a distress cannot be made in the night, either for a Rent-Service or a Rent-Charge—*Co. Litt.* 142 *a.* *Aldenburg* v. *People*, 6 *C. & P.* 212. But as for damage feasant, a person may distrain in the night, *Co. Litt.* 142 *a.*; so for Rent-Charge in respect of Lammas lands and commons (No. 76.), where cattle or stock are placed thereon in the night, a distress may, it is conceived, be made during the night, the Rent-Charge in such case becoming payable in the night, and otherwise the beasts may be gone before they could be distrained.

SECTION III.

Where a distress may be taken.

174. Distresses for rent may not be taken in the king's highway, nor in the common street.—52 *Hen. III. c.* 51.

175. If the landlord go upon the premises to distrain, and he has a view of the cattle or chattels, and the tenant remove them to prevent a distress, the landlord may follow and distrain them off the premises, but if the cattle go off the land themselves before being seen by the landlord, he cannot follow them.—*Co. Litt.* 161 *a.*

176. Distress cannot be made for rent on land enjoyed as a mere easement or privilege.—*Capel* v. *Buzzard, in error,* 6. *Bingham,* 150.

177. But allotments made after the Commutation in respect of rights of common, are liable to distress for the Rent-Charge fixed on tenements, to which they are appended or appurtenant. (No. 154.) A landlord may distrain cattle or stock of the tenant depasturing on any common appendant or appurtenant.—11 *Geo. II. c.* 19, *s.* 8.

SECTION IV.

What things are the subject of distress, and exemption therefrom.

178. No distress can be made upon land in the possession of the king.—*Bro. Dis. pl.* 46. *Bradby Dis.* 107. In some cases the king's grantee is privileged from distress for rent, as where the land is once

absolutely vested in the king by office or record, *Bro. Dis. pl.* 47; but not for a Rent-Charge upon it, *Bro. Dis. pl.* 27; unless the Rent-Charge, as well as the land, were bound by the office.—*Bradby Dis.* 108, 109.

179. However, by *s.* 12 of the Tithe Commutation Act, the word "person" shall mean and include the king's majesty; her majesty is therefore included in section 85. (No. 109.) In general, the king is not bound by a statute unless specially named.—11 *Rep.* 68.

180. But where crown lands, by reason of their being of the tenure of ancient demesne, or otherwise, are exempted from payment of tithes whilst in the tenure, occupation, or manurance of her majesty, her tenants, farmers, or lessees, or their under-lessees, as the case may be, they are also exempted from the Rent-Charge whilst in the like tenure or occupation. —2 & 3 *Vic. c.* 62, *s.* 12.

181. And where any lands were exempted from tithe, whilst in the occupation of the owner thereof, by reason of being glebe, or of having been heretofore parcel of the possessions of any privileged order, the same lands shall be in like manner exempted from the payment of the Rent-Charge apportioned on them, whilst in the occupation of the owner thereof.—6 & 7 *Wm. IV. c.* 71, *s.* 71. But the Rent-Charge payable for such lands should be separately stated in the award, No. 18. As to the exemption of barren lands (*s.* 71,) seven years since Christmas, 1835, having expired, this exemption will no longer apply.

182. By the 7 *Anne, c.* 12, the goods of all ambassadors, or other public ministers of any foreign province or state, or the domestic servants of such ambassadors or public ministers, are privileged from distress. But where the servant of an ambassador rented a house, and let part of it in lodgings, it was held that his goods were distrainable for poor rates.—*Novello* v. *Toogood*, 1 *B. & C.*, 554; *S. C.*, 2 *D. & R.*, 833.

183. It may be laid down as a general rule, that all personal chattels are liable to be distrained unless particularly protected or exempted.—3 *Bl. Comm.* 7. But as every thing which is distrained, is presumed to be the property of the wrong doer, it will follow that such things wherein no one can have an absolute property cannot be distrained, and therefore dogs, cats, rabbits, and animals feræ naturæ cannot, (*Co. Litt.* 47 *a.*; 3 *Bl. Comm.* 7); nor fishes in a pond, (1 *Cro.* 188); nor poultry (2 *Inst.* 133). But deer in an enclosed park may be distrained (*Davis* v. *Powell, Willes*, 48. 3 *Bl. Comm.* 7. *Bradby Dis.* 207); and poultry, if confined in a cage or coop, not fixed, may no doubt be distrained, but otherwise they cannot properly be impounded.

184. Things for which a replevin will not lie so as to be identified, are exempt from distress; therefore, loose money, meal, or the like, not confined in a bag or sack, and consequently bearing no mark by which they could be known, cannot be distrained; but when inclosed in a bag, which might be marked and known, they can, as, its identity being established, the objection ceases.—1 *Roll. Abr.* 666.

185. Articles distrained being considered anciently as a pledge merely, and not liable at common law to be sold, nothing could be distrained which could not be restored in the same condition and undamaged; so milk, fruit, and other perishable articles, are not distrainable, nor the flesh of animals lately slaughtered, *Morley* v. *Pincombe*, 2 *Exch. Rep.* 101. Nor till made distrainable by statute, could hay or sheaves of corn be the subject of distress.—3 *Bl. Comm.* 9.

186. But by the statute 2 *W. & M. sess.* 1, *c.* 5, *s.* 3, sheaves or cocks of corn, or corn loose in the straw, or hay lying or being in any barn or granary, or upon any hovel, stack, or rick upon any part of the land or ground charged with the rent, are made distrainable.—*Johnson* v. *Faulkner*, 2 *A. & E. N. S.* 925. 2 *Gale & D.* 184. 6 *Jur.* 832. See No. 146.

187. Also by the 11 *Geo. II. c.* 19, *s.* 8, all sorts of corn and grass, hops, roots, fruits, pulse, or other product whatsoever, which shall be growing on any part of the estate demised or holden, may be taken as a distress for rent. But this statute does not apply to trees, shrubs, and plants growing in a nursery-ground.—See Nos. 144, 145, 146.

188. Whether the things belong to the tenant or to a stranger, is generally not material, otherwise a door would be opened to fraud upon the landlord.—3 *Bl. Comm.* 8. *Johnson* v. *Faulkner*, *supra.*

189. But where a stranger's beast escape into the land through the fault of the tenant, in not repairing his fences, the landlord cannot distrain them unless the owner suffers the beasts to remain after notice to him.—*Lutw.* 364. But such notice, it is said, is not necessary where the distress is by the lord of the

fee, for an ancient rent, or by the grantee of a Rent-Charge.—*Woodf.* 301. If the cattle escape into the land accidentally, they are not distrainable until they have been *levant* and *couchant*, (that is, long enough on the ground to feed and to lie down to rest, which, in general, is held to be one night at least,) but if they escape by the default of the owner, they are distrainable the first minute.—1 *Ld. Raymond*, 169. 3 *Bl. Comm.* 8.

190. The exemption of cattle or articles from distress is in some cases absolute, and in others conditional of other sufficient distress being found on the premises.

191. Thus, articles in use are not distrainable, as a horse on which a person is riding.—*Storey* v. *Robinson*, 6 *T. R.* 138; or an axe with which he is cutting wood.—*Co. Litt.* 47 *a.* Nor wearing apparel in actual use; but if put off, though only for the purpose of repose, it is liable to be taken as a distress.—*Bisset* v. *Caldwell*, *Peake*, 50—*Baynes* v. *Smith*, 1 *Esp. N. P. C.* 206. Cattle or goods in the actual use of a party cannot be distrained damage feasant.—*Field* v. *Adames*, 4 *P. & D.* 504.—12 *A. & E.* 649.

192. Goods in the way of trade, belonging to third persons, are for the benefit of trade exempted from distress, as a horse in a smith's shop to be shod, or in a common inn; cloth at a tailor's; or corn sent to a mill or market.—*Co. Litt.* 47 *a.* 3 *Bl. Comm.* 8. *Gorton* v. *Faulkner*, 4 *T. R.* 565. *Simpson* v. *Hartopp Willes*, 512. Also goods of a principal in the hands of a factor.—*Gilman* v. *Elton*, 6 *Moore*, 243.

3 *B. & B.* 75.—But a horse or chariot standing at livery stables is liable, they not being a common inn. —*Francis* v. *Wyatt*, 3 *Burr.* 1498. *S. C.* 1 *Bl. Rep.* 483. *Parson* v. *Gingell*, *Lewis* v. *Gingell*, 11 *Jur.* 437. 16 *Law*, *J. C. P.* 227. 4 *C. B.* 545. The goods to be exempted must be within the precincts of the inn.—*Cooper* v. *Tomlinson*, *Barn.* 472. 2 *Burr.* 1500; and the exemption does not extend to the goods of a person dwelling therein as tenant.—*Francis* v. *Wyatt*, *supra*. So brewers' casks sent to a public house with beer, and there left until the beer is consumed, are liable to be distrained. —*Joule* v. *Jackson*, 7 *M. & W.* 450. If articles are sent to remain at a place they are distrainable, but if sent for a particular impose, and the remaining at the place be an incident necessary for the completion of such purpose they are not.—*Parsons* v. *Gingell*, *Lewis* v. *Gingell*, *supra*.

193. If a horse go with yarn to a weaver, and carry it to a private house to be weighed, neither the horse nor yarn can be distrained. So a horse that brings corn to market, and is put into a private yard while the corn is selling, cannot be distrained.—*Rede* v. *Burley*, *Cro. Eliz.* 596; nor goods in the possession of a common carrier, or of a private person undertaking to carry them for hire.—*Gisbourn* v. *Hust*, 1 *Salk.* 249; nor goods sent to an auctioneer for sale. —*Adams* v. *Grane*, 1 *C. & M.* 380. 3 *Tyrw.* 326; nor a beast sent to a butcher to be slaughtered.—*Brown* v. *Shevill*, 4 *N. & M.* 277. 2 *A. & E.* 138. Nor a carriage sent to a coach-maker and common agent for sale.—*Findon* v. *M'Caren*, 14 *Law*, *J. N. S. Q. B.* 183. 9 *Jur.* 369.

194. Cattle on their way to market for the purpose of being sold, and put to graze for the night immediately before the market-day, for their necessary refreshment, are privileged.—*Tate* v. *Gleed*, 2 *Saund.* 290. *n.* 7. 2 *Lutw.* 1161; but where the beasts on the road to market were put on premises remote from it, it was held they were liable.—*Fowkes* v. *Joyce*, 3 *Lev.* 260. 2 *Lutw.* 1161. Cattle permanently agisting may be distrained.—*Roll Abr.* 669. *Cro. Eliz.* 549.

195. Salt was manufactured and publicly sold at certain salt works, and carried away in boats of the purchasers, which came, for the purpose of being loaded with it, into a cut or canal on the premises communicating with a public navigation. The boat of the plaintiff, an alkali manufacturer, was lying in this cut or canal for the purpose of receiving and carrying away salt, bought by him for the purpose of his manufacture: held (Parke B. dissentiente) that the boat was not privileged from distress for arrears of an annuity issuing out of the land on which the salt works were erected, and granted by the manufacturer and seller of the salt.—*Muspratt* v. *Gregory*, 1 *M. & W.* 633. 677.

196. Materials delivered by a manufacturer to a weaver, to be manufactured at his own house, are privileged.—*Wood* v. *Clarke*, 1 *C. & J.* 484. *Gibson* v. *Ireson*, 3 *Ad. & E. N. S.* 39.

197. A frame or other machinery delivered with the materials, was held not to be privileged. *Wood* v. *Clarke*, *supra*. But by 6 & 7 *Vic. c.* 40, *s.* 18, no frame, loom, or machine, materials, tools, or appa-

ratus, which shall be intrusted for the purpose of being used or worked in the manufactures therein named, [*i. e.* woollen, worsted, linen, cotton, flax, mohair, or silk manufacture, or any trade or employment connected with the manufacture of stockings, gloves, and other articles of hosiery, or in any work connected therewith,] shall be distrained or seized for rent or debt, or under any execution or proceeding, unless the rent be due or the money owing by the owner of the frame, &c. And by *sec.* 19, in case of refusal to restore frame, &c., unlawfully seized, Justices of the peace may order the restoration with costs.

198. Furnaces, cauldrons, or other things fixed to the freehold cannot be distrained. (*Co. Litt.* 47 *b.*) Nor a mill-stone, though removed out of its place to be picked, as the stone still continues part of the mill, nor a smith's anvil, which is part of the forge though not actually fixed by nails to the shop. (*Bro. Abr. Distress, pl.* 23.) But whether machinery fixed by bolts to the floor of a factory can be distrained seems doubtful.—*Duck* v. *Brayde M'Cleb*, 217. 13 *Price*, 459. Fixtures are not distrainable for rent, although they belong to the tenant, and come within the usual denomination of tenants' fixtures, such as grates, stoves, &c., as they cannot be restored in the same plight.—*Darby* v. *Harris*, 5 *Jurist*, 988. 1 *Gale & D.* 234. 1 *Ad. & E. N. S.* 895.

199. The tools, utensils, or instruments of a man's trade or calling, as the axe of a carpenter, the books of a scholar, and the like, are privileged from distress, not only when in actual use, but also whilst

any other distress can be found: but they are privileged only in those cases.—*Co. Litt.* 47 *b.* *Fenton* v. *Logan*, 9 *Bing.* 676. 3 *M. & S.* 82. *Gaton* v. *Faulkner*, 4 *T. R.* 565. *Simpson* v. *Harcourt*, 4 *T. R.* 568.

200. The statute, *de districtione scaccarii*, 51 *Hen. III. st.* 4, which is an affirmance of the common law, enacts that no man shall be distrained by the beasts of the plough, or his sheep, either by the king, or any other, while there is another sufficient distress.

201. Goods in the custody of the law are not distrainable, such as goods already under distress, or in a bailiff's hands under an execution (*Co. Litt.* 47 *a.* *Park*, 120); nor corn sold under an execution, but so circumstanced that it has not been proper to remove it, as where the corn remained until ripe, and after it was cut and before fit to be carried away, the landlord distrained, it was held it was not distrainable. (*Eaton* v. *Southby*, *Willes*, 131.) Growing corn is not distrainable for rent accruing due after the seizure in execution. (*Wright* v. *Dewes*, 3 *N. & M.* 790. 1 *A. & E.* 641.) But where the purchaser under an execution permitted the corn to lie on the ground an unreasonable time after severance, it was held to be distrainable. (*Peacock* v. *Purvis*, 2 *B. & B.* 362.) And if a sale under an execution be fraudulent, the goods may be distrained for rent after such sale.—*Smith* v. *Russell*, 3 *Taunt.* 400.

202. And by the 56 *Geo. III. c.* 50. *s.* 6, where any crop or produce shall be sold by the sheriff or other officer, to be consumed on the land, according to the provisions of that Act, it shall not be lawful for the owner or landlord to distrain for rent on any corn,

hay, straw, or other produce which shall be severed from the soil, and sold by such sheriff or other officer, nor on any turnips, whether drawn or growing, if sold according to the Act, nor on any horses, sheep, or other cattle, nor on any beasts whatsoever, nor on any waggons, carts, or other implements of husbandry which any person shall employ for the purpose of thrashing out, carrying, or consuming, any such corn, hay, straw, turnips, or other produce.

203. The bankruptcy or insolvency of the tenant does not prevent a distress.—*Lee* v. *Lopes*, 15 *East*, 230.

204. The power of distress given by the Tithe Commutation Act to the owner of the Rent-Charge, confining it to the lands liable to the payment, it follows that the power does not apply to the provisions of the statutes 8 *Anne*, *c.* 14. & 11 *Geo. II. c.* 19, enabling a landlord to follow the goods of his tenant clandestinely or fraudulently removed.

205. It has been doubted whether the owner of the Rent-Charge is entitled to one year's Rent-Charge, under an execution by virtue of the statute 8 *Anne*, *c.* 14. entitling a landlord in such case to one year's rent; but in *Benett's Case*, *Strange*, 787, it was held that the statute extended only to the immediate landlord of the premises, and not to the ground landlord distraining the goods of the under-tenant. It cannot therefore extend to Tithe Commutation Rent-Charge. Nor does the new County Courts' Act apply to the Rent-Charge.

206. Again, the Bankrupt Act (6 *Geo. IV. c.* 16. *s.* 74.) and Insolvent Debtors' Act (1 *Vic. c.* 110. *s.* 58.)

and the Insolvency Act (7 & 8 *Vic. c.* 96. *s.* 18.) limiting a distress for rent to one year's arrear, but that the landlord, or party to whom the rent is due, shall come in as a creditor for the overplus, cannot apply to the Rent-Charge, the Tithe Commutation Act expressly prohibiting any personal liability, and the Rent-Charge, therefore, not being proveable against the bankrupt or insolvent estate;—nor is the case within the object of the Acts, for if the bankrupt or insolvent is tenant, his assignee is entitled to claim the amount from the landlord, and if he is the landowner, his real estate would be liable in case of insufficiency of distress.

SECTION V.

Entry on the Premises to Distrain.

207. In order to make a distress for rent, a person must obtain entry without force; therefore gates or inclosures may not be broken open or thrown down. (*Co. Litt.* 161 *a.*) Nor may the lessor enter the tenant's house to distrain, unless the door is open. (2 *Bac. Abr. tit. Distress.* 347.) A padlock on a barn door may not be opened by force.—9 *Vin. Abr.* 128. *pl.* 6.

208. If the outer door be open, one may break an inner door to take a distress (*Browning* v. *Dann, Cases, tem. Hardwicke,* 168. *Bull. N. P.* 82); but admission should first be demanded, if there is an opportunity to do so, as the party would not be justified in doing unnecessary damage.

209. If a distress become legally made, and the distrainer be afterwards expelled, he may, it seems, break the outer door to renew the distress, with the assistance of a peace officer (*Francombe* v. *Pinche*, *Esp. N. P.* 386. *Eagleton* v. *Gutteridge*, 11 *Mee & W.* 465. 12 *Law, J. N. S.* 359); but there should be no unnecessary delay in retaking possession.—*Russell* v. *Rider*, 6 *C. & P.* 416.

210. If any resistance or violence is threatened or attempted by the occupier on a distress being made, the attendance of a constable may be procured to prevent a breach of the peace.—*Skidmore* v. *Booth*, 6 *C. & P.* 777. If the tenant lock up his gates and shut the doors, admittance should be demanded, for the purpose of distraining; but should the occupier persevere in refusing access, the distress cannot be made.

SECTION VI.

Of the Authority to distrain.

211. The distress may be made by the person to whom the rent is due (*Bradby Dis.* 216); or it may be made by a bailiff, that is, an agent authorized by him, who should have a written authority for the purpose, or, as it is usually called, a Warrant of Distress, and, if required, he should show his authority. (*Bradby Dis.* 217.) The warrant need not be stamped or sealed, although the distress be made by a corporation, (1 *Salkeld* 191. *Smith* v. *Birmingham Gas Co.* 1 *A. & E.* 526.) but it should be signed by the person entitled to the rent, and, in case of a joint

distress, the Warrant should be signed by all the parties entitled to distrain. (1 *Leon.* 50. 3 *Taunton*, 120. *Goodtitle* v. *Woodward*, 3 *B.* & *A.* 69.) The distress would, however, be good without such authority, if the person on whose behalf it is made adopts the distress.—1 *Saund.* 347. *Duncan* v. *Meikleham*, 3 *C.* & *P.* 172.

212. Where a distress was made by command, and in the name of a landlord, but he died before the distress was actually made; held that the bailiff might make cognizance as the bailiff of his executrix, under 32 *Hen. VIII. c.* 37, who ratified the distress, although before probate.—*Whitehead* v. *Taylor*, 2 *P.* & *D.* 367.

213. Although the Tithe Commutation Statute says it shall be lawful for the person entitled to the arrears of Rent-Charge to distrain, yet he, being put on the same footing with a landlord, may depute an agent or a broker to make the levy.

214. The Warrant of Distress may be as follows:

Mr. E. F.

I hereby authorize you to seize and distrain the goods, chattels, and effects of Mr. G. H., or whom else it may concern, on the lands and premises numbered in the Apportionment of the Rent-Charge of the parish of , in the county of , for the sum of , being for arrears of Rent-Charge due to me as Rector of the said parish on the 1st day of last, for the said lands and premises. And for your so doing, this shall be your sufficient Warrant and Indemnity.

Dated this day of 1849.

A. B.

215. It is usual to state the amount due, and up to what period, in a Warrant of Distress; but the latter is not necessary. (*Moss* v. *Gallemore.* 1. *Doug.* 279.) It is advisable, however, under the Tithe Commutation Act, that the proceeding by distress should be conducted with some particularity, especially as it is founded on a previous ten days' notice.

216. A general Warrant of Distress for arrears of Rent-Charge may be given, but a separate authority for each case is preferable, unless the giving such separate power would be attended with inconvenience, as in the case of Lammas lands or commons.

217. For Lammas lands and commons, a general Warrant may be given in the following form:

Mr. E. F.

I hereby authorize you to seize and distrain any cattle or stock turned upon the Lammas lands or commons of the parish of , in the county of , for such sum of money or rate per head as is chargeable thereon by virtue of the Commutation of the Tithes of the said parish, in case the same be not paid on such cattle or stock being first turned upon such lands or commons. And for your so doing, this shall be your sufficient Warrant and Indemnity. Dated this day of , 1849.

A. B.

218. In respect of cattle or stock turned upon Lammas lands or commons, the cattle being charged per head, and being liable to distress for the sum due in respect of such cattle, it would seem that each head of cattle must be distrained for its own liability, and not one of the cattle taken to answer the claim on several (see No. 76). In the case of

cattle damage feasant, it was held in *Vasper* v. *Edwards*, 1 *Salk.* 248. 12 *Mod.* 661, that if ten head of cattle were doing damage, a man cannot take one of them and keep it till he is satisfied for the whole damage, but for its own damage only.

SECTION VII.

Of the Mode of Distraining.

219. There is no prescribed form for making a distress, but if the person entitled to the rent make it personally, he is merely to take some article in the name of all the goods in the house, (2 *Bradby Dis.* 216.) or such as he intends to levy on. He may say, "I take this chair (or other article) in the name of all the goods on these premises, as a distress for £ due to me for Rent-Charge, on the 1st last;" or if part of the goods, he may say, "I take such and such articles," &c.

The bailiff may make the distress in like manner, but stating that he makes it as the bailiff, or on behalf of the person entitled to the rent.

220. A seizure of some goods in the name of all the goods in the house is a good seizure of all. (*Dod* v. *Morgan*, 6. *Mod.* 215. 9 *Vin. Abr.* 127.) But if the goods are considerably more than sufficient to satisfy the arrears and costs, the party is liable to an action for an excessive distress.—Statute of Marlbridge, 52 *Henry III. c.* 4.

221. A very slight expression of intention to distrain is sufficient. Where a landlord said he would

not suffer a particular article, or any of the other things to go off the premises till his rent was paid, and then left the place, but the article being removed in the morning of the same day, he sent a broker to distrain, who brought the article back, it was held that the distress had been commenced by the landlord in the early part of the morning, and the broker was justified in bringing back the article. (*Wood* v. *Nunn*, 2 *Moody & Payne*, 27. 5 *Bingham* 10.) Also where a landlord's agent went on the premises, walked round them, and gave a written notice that he distrained the goods, and then went away, leaving no one in possession, it was held an actual seizure as between landlord and tenant in an action for an excessive distress, though it might be otherwise as against third persons. *Swan* v. *Earl of Falmouth*, 2 *M. & R.* 534.) Also where a landlord's broker went to the tenant's house and pressed for payment of rent with expenses of the levy, although in fact he made none, and the tenant paid the rent and expenses under protest, in an action for an excessive distress, it was held that the defendant could not say there was no actual distress.—*Hutchins* v. *Scott*, 2 *M. & W.* 809. A person having a claim for rent or Rent-Charge should, therefore, be cautious in his expressions on making or threatening a distress.

CHAPTER VIII.

OF THE IMPOUNDING, NOTICE, APPRAISEMENT, AND SALE OF THE DISTRESS.

SECTION I.

Of the Impounding of the Distress.

222. At the common law a man might have driven the distress into what county he pleased (2 *Inst.* 106); but by statute 52 *Hen. III. c.* 4, none shall cause any distress that he hath taken to be driven out of the county where it was taken: and the 3 *Ed. I. c.* 16, is to the same effect.

223. By 1 & 2 *P. & M. c.* 12. *s.* 1, for the avoiding of grievous vexations, exactions, trouble, and disorder in taking of distresses, and impounding of cattle, no distress of cattle shall be driven out of the hundred, rape, wapentake, or lathe where such distress is or shall be taken, except that it be to a pound overt within the same shire, not above three miles distant from the place where the said distress is taken; and that no cattle or other goods distrained or taken by way of distress, for any manner of cause at one time, shall be impounded in several places, whereby the owner or owners of such distress shall be constrained to sue several replevies for the delivery of the said distress so taken at one time, upon pain that every person offending contrary to this

Act shall forfeit to the party grieved for every such offence an hundred shillings, and treble damages.

224. And by *sec.* 2, no person or persons shall take for keeping in pound, impounding, or poundage of any manner of distress, above the sum of four-pence for any one whole distress that shall be so impounded; and where less hath been used, there to take less; upon the pain of five pounds to be paid to the party grieved, over and beside such money as he shall take above the sum of four-pence, any usage or prescription to the contrary notwithstanding.

225. But where land lying in two adjoining counties was held under one demise at one entire rent, and the landlord distrained cattle in both counties for the rent, it was decided that he might chase them all into one county; but if the counties had not adjoined, it would have been otherwise.—*Walter* v. *Rumbal*, 1 *Ld. Raym.* 53. 12 *Mod.* 76. 1 *Salk.* 247.

226. Under the Tithe Commutation Act the distress may be taken on the lands in the same parish, (that is, by *sec.* 12, district for the Commutation of Tithes,) held by the occupier as owner thereof, or under the same landlord (No. 109). If under this section, cattle are distrained in two counties, the impounding may therefore be in either; otherwise the cattle should be impounded in the county where taken.

227. Cattle may be impounded in a pound overt or public pound, or on the premises, where the owner may supply them with food. But if they are put in a pound covert, as in a house or private

pound, the distrainor must give them sustenance at his peril, and for which he shall have no satisfaction. —*Co. Litt.* 47 *b.*

228. But if the distress be of utensils of household or other dead goods which may take harm by wet or weather, or be stolen away, then they must be impounded in a house or other pound covert; for if they are impounded in a pound overt, the distrainor must answer for them if damaged or stolen.—*Co. Litt.* 47 *b.*

229. By statute 2 *Wm. & Mary, sess.* 1. *c.* 5, entitled, "An Act for enabling the sale of goods distrained for rent in case the rent be not paid in a reasonable time," reciting that the most ordinary and ready way for recovery of arrears of rent is by distress, yet such distresses not being to be sold, but only detained as pledges for enforcing the payment of such rent, the persons distraining have little benefit thereby; for the remedying whereof (*sec.* 2.) it is enacted, That where any goods or chattels shall be distrained for any rent reserved and due upon any demise, lease, or contract whatsoever, and the tenant or owner of the goods so distrained shall not, within five days next after such distress taken, and notice thereof (with the cause of such taking) left at the chief mansion-house, or other most notorious place on the premises charged with the rent distrained for, replevy the same with sufficient security to be given to the sheriff according to law, that then in such case, after such distress and notice as aforesaid, and expiration of the said five days, the person distraining shall and may, with the sheriff or undersheriff of the

county, or with the constable of the hundred, parish, or place where such distress shall be taken (who are thereby required to be aiding and assisting therein) cause the goods and chattels so distrained to be appraised by two sworn appraisers (whom such sheriff, undersheriff, or constable are thereby empowered to swear), to appraise the same truly, according to the best of their understandings; and after such appraisement shall and may lawfully sell the goods and chattels so distrained, for the best price that can be gotten for the same, toward satisfaction of the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisement, and sale, leaving the overplus (if any) in the hands of the said sheriff, undersheriff, or constable, for the owner's use.

230. And by *sec.* 3, reciting that no sheaves or cocks of corn loose or in the straw, or hay in any barn, or granary, or on any hovel, stack, or rick, could by the law be distrained, or otherwise secured for rent, whereby landlords are oftentimes cousened (cozened) and deceived by their tenants, who sold their corn, grain, and hay, to strangers, and removed the same from the premises chargeable with such rent, and thereby avoided the payment of the same, it is enacted, That it shall and may be lawful to and for any person or persons having rent arrear and due upon any demise, lease, or contract, as aforesaid, to seize and secure any sheaves or cocks of corn, or corn loose, or in the straw, or hay lying or being in any barn or granary, or upon any hovel, stack, or rick, or otherwise upon any part of the land or

ground charged with such rent, and to lock up or detain the same in the place where the same shall be found, for or in the nature of a distress, until the same shall be replevied upon such security to be given as aforesaid, and in default of replevying the same as aforesaid, within the time aforesaid, to sell the same after such appraisement thereof to be made; so as, nevertheless, such corn, grain, or hay so distrained, as aforesaid, be not removed by the person or persons distraining, to the damage of the owner thereof, out of the place where the same shall be found, and seized, but be kept there (as impounded) until the same shall be replevied, or sold in default of replevying the same within the time aforesaid.

231. By *sec.* 4, upon any pound-breach, or rescous of goods or chattels distrained for rent, the person or persons grieved thereby shall, in a special action upon the case for the wrong thereby sustained, recover his and their treble damages and costs of suit against the offender or offenders in any such rescous or pound-breach, any or either of them, or against the owners of the goods distrained, in case the same be afterwards found to have come to his use or possession.

232. By *sec.* 5, if any distress and sale shall be made by virtue or colour of that act for rent pretended to be arrear and due, where in truth no rent is arrear or due, the owner shall, by action of trespass or on the case, recover double of the value of the goods or chattels so distrained and sold, together with full costs of suit.

233. By statute 11 *Geo. II. c.* 19, *s.* 8, it shall and

may be lawful to and for every lessor or landlord, lessors or landlords, or his, her, or their steward, bailiff, receiver, or other person or persons empowered by him, her, or them, to take and seize, as a distress for arrears of rent, any cattle or stock of their respective tenant or tenants, feeding or depasturing upon any common, appendant, or appurtenant, or any ways belonging to all or any part of the premises demised or holden, and also to take and seize all sorts of corn and grass, hops, roots, fruits, pulse, or other product whatsoever, which shall be growing on any part of the estates so demised or holden, as a distress for arrears of rent, and the same to cut, gather, make, cure, carry, and lay up, when ripe, in the barns, or other proper place on the premises so demised or holden; and in case there shall be no barn or proper place on the premises so demised or holden, then in any other barn or proper place which such lessor or landlord, lessors or landlords, shall hire or otherwise procure for that purpose, and as near as may be to the premises, and in convenient time to appraise, sell, or otherwise dispose of the same, towards satisfaction of the rent for which such distress shall have been taken, and of the charges of such distress, appraisement, and sale, in the same manner as other goods and chattels may be seized, distrained, and disposed of, and the appraisement thereof to be taken when cut, gathered, cured, and made, and not before.

234. *Sec.* 9. Provided always, that notice of the place where the goods and chattels so distrained shall be lodged or deposited, shall, within the space of one

week after the lodging or depositing thereof in such place, be given to such lessee or tenant, or left at the last place of his or her abode; and that if after any distress for arrears of rent so taken, of corn, grass, hops, roots, fruits, pulse, or other product, which shall be growing as aforesaid, and at any time before the same shall be ripe and cut, cured or gathered, the tenant or lessee, his or her executors, administrators, or assigns, shall pay, or cause to be paid, to the lessor or landlord, lessors or landlords, for whom such distress shall be taken, or to the steward or other person usually employed to receive the rent of such lessor or lessors, landlord or landlords, the whole rent which shall be then in arrear, together with the full costs and charges of making such distress, and which shall have been occasioned thereby; that then and upon such payment or lawful tender thereof actually made, whereby the end of such distress will be fully answered, the same and every part thereof shall cease, and the corn, grass, hops, roots, fruits, pulse, or other product so distrained, shall be delivered up to the lessee or tenant, his or her executors, administrators, or assigns, any thing thereinbefore contained to the contrary notwithstanding.

235. It was held in *Clark* v. *Gaskarth*, 2 *Moore*, 491—8. *Taunt.* 431, and in *Clark* v. *Calvert*, 3 *Moore*, 96—8. *Taunt.* 742, that the words "other product whatsoever growing upon any part of the estate demised," did not apply to trees, shrubs, and plants, growing in a nursery-ground, but that they were confined to products of a similar nature with those specified in the Act, to all of which the process of

becoming ripe, and of being cut, gathered, made, and laid up when ripe, was incidental.

236. By *sec.* 10 of the last-mentioned Act, reciting that great difficulties and inconveniences frequently arise to landlords and lessors and other persons taking distresses for rent, in removing the goods and chattels, or stock distrained off the premises, in cases where by law they may not be impounded and secured thereupon; and also to the tenants themselves many times, by the damage unavoidably done to such goods and chattels or stock, in the removal thereof; it is enacted, That it shall and may be lawful to and for any person or persons lawfully taking any distress for any kind of rent, to impound or otherwise secure the distress so made, of what nature or kind soever it may be, in such place, or on such part of the premises chargeable with the rent, as shall be most fit and convenient for the impounding and securing such distress; and to appraise, sell, and dispose of the same upon the premises, in like manner, and under the like directions and restraints to all intents and purposes, as any person taking a distress for rent might then do off the premises, by virtue of the Act of the 2 *W.* & *M.* (before stated, No. 229.) or of an Act of the 4 *Geo. II.* [which does not apply to the Rent-Charge]; and that it shall and may be lawful to and for any person or persons whatsoever, to come and go to and from such place, or part of the said premises, where any distress for rent shall be impounded and secured as aforesaid, in order to view, appraise, and buy, and also in order to carry off, or remove the same, on account of the purchaser

thereof; and that if any pound-breach or rescous shall be made of any goods and chattels, or stock distrained for rent, and impounded, or otherwise secured by virtue of this Act, the person or persons aggrieved thereby shall have the like remedy, as in cases of pound-breach, or rescous is given and provided by the said statute.

237. An open field is a pound sufficient at law in which to impound cattle for rent arrear.—*Thomas* v. *Haines*, 1 *Scott. N. S.* 524. *Castleman* v. *Hicks*, 1 *C. & M.* 266.

238. The cattle or thing distrained must not be worked or used by the distrainor although it be beneficial to the distress.—*Cro. Eliz.* 783.

239. Nor must the cattle be tied in the pound, but if the distress be lost by the act of God, as if it die in the pound without the distrainor's fault, the party may distrain again.—*Vesper* v. *Edwards*, 1 *Salk.* 248. 12 *Mod.* 662.

240. But the distrainor must see that the pound is in a proper state to receive the distress; otherwise he will be answerable if damage ensue.—*Wilder* v. *Speer*, 8 *A. & E.* 547.

241. By the 5 & 6 *Wm. IV. c.* 59, *s.* 4, every person who shall impound or confine any horse, ass, or other cattle or animal in any common pound, open pound, or close pound, or any inclosed place, is required to provide such horse, ass, or other cattle or animal daily, with good and sufficient food and nourishment, for so long a time as such horse, ass, or other cattle or animal shall remain impounded or confined, and such person is empowered to recover

from the owner or owners of such cattle or animal, not exceeding double the full value of the food and nourishment so supplied, by proceeding before any one Justice of the Peace within whose jurisdiction such cattle or animal shall have been impounded; or instead of such proceeding, he shall be at liberty, after the expiration of seven clear days from the time of impounding the same, to sell any such horse, ass, or other cattle or animal, openly at any public market (after having given three days' public printed notice thereof), for the most money that can be then got for the same, and to apply the produce in discharge of the value of the food and nourishment, and the expenses attending the sale, rendering the overplus, if any, to the owner of such cattle or animal.

242. By *sec.* 5, in case any horse, ass, or other cattle or animal, shall remain impounded or confined, without sufficient daily food or nourishment, more than twenty-four hours, it shall be lawful for any person or persons whomsoever, as often as shall be necessary, to enter into and upon any such common pound, open pound, or close pound, or other inclosed place, in which any such cattle or animal shall be so impounded or confined, and to supply such cattle or animal with such good and sufficient food and nourishment, during so long a time as such cattle or animal shall remain impounded or confined, without being liable to any action of trespass or other proceeding by any person or persons whomsoever by reason of any such entry.

243. A party distraining cattle and supplying them with food while impounded, may sell any one

or more of them, and apply the produce in discharge of the value of such food, and may repeat such sale from time to time as need requires.—*Layton* v. *Hurry*, 15 *Law. J. N. S. Q. B.* 244. 10 *Jar.* 616. 8 *Q. B.* 811.

244. It follows from the preceding statements that the Distress is to be impounded,—If cattle either in a public open pound within the hundred, rape, wapentake, or lathe, or in the county, within three miles from the place where the distress is taken, and the distrainor is to take care that the pound is in a suitable state; or on the premises; and he must supply them with sufficient daily food. If dry goods, he may secure them either in a house or covered building within the hundred, rape, wapentake, or lathe, or in the county, within three miles, or on some part of the premises. But as to sheaves or cocks of corn or hay, see No. 230; and as to growing crops, 233.

245. Where cattle or goods are secured on the premises, it is proper to leave a man in possession, as well to guard the distress as to give possession to the distrainor for the purpose of disposing of the distress.

246. When the goods are suffered to remain dispersed over different parts of the premises instead of securing them on some part of the premises, the express consent of the owner to their so remaining should be obtained, it being held in one case that otherwise the distrainer was liable to an action of trespass.—See *Winterbourne* v. *Morgan*, 11 *East*, 405.

SECTION II.

Of the Notice of Distress.

247. The Statute 2 *Wm. & Mary, sess.* 1. *s.* 5. *s.* 2, (No. 229.) requires notice of the distress with the cause of the taking to be left at the chief mansion-house or other most notorious place on the premises charged with the rent. The notice must be in writing, and not left to parol evidence. (*Wilson* v. *Nightingale*, 15 *Law. J. N. S. Q. B.* 309. 10 *Jur.* 917. 8 *Q. B.* 1034, overruling *Walker* v. *Rumball*, 12 *Mod.* 76.) The statute requires it to state the cause of the distress, but it is not material to state when the rent becomes due. (*Moss* v. *Gallimore*, *Doug.* 279.) Under the Tithe Commutation Statute it is advisable strictly to comply with the statute.

248. The distrainor should be accompanied by a witness, and be prepared with two copies of the proper notice—one to be given to the occupier, either personally or left at the chief mansion-house, or other most notorious part of the premises charged with the rent, and the other to keep as evidence. The witness should make a memorandum on the notice kept of the service of the copy.

249. An inventory of the goods distrained should be made, in order that the tenant may know what articles are under distress, and the inventory should be underwritten or annexed to the notice.

250. *Form of the Notice.*

To Mr. , and whom else it may concern.

Take notice, that by the authority of the Rev. A. B., I have distrained on the lands and premises numbered in the apportionment of the Rent-Charge of the parish of , in the county of , the [cattle] goods, chattels, and effects, mentioned in the Inventory hereunder written, for the sum of , being for arrears of Rent-Charge due to him as *Rector* of the said parish on the 1st day of October last, for the said lands and premises; and that unless the said arrears of Rent-Charge, with the costs of distress, be paid, or the said [cattle] goods, chattels, and effects replevied, within five days from the service hereof, I shall cause the said [cattle] goods, chattels, and effects, to be appraised and sold, according to law.

The latter part of the notice "and that unless, &c." does not seem to be required by the Statute. (No. 229.)

If secured on part of the premises, add—

And take notice, that the said goods, chattels, and effects, are secured in a certain apartment, being the front room on the ground floor of the said premises.

Or, if cattle, say,

Secured in a certain stable, &c.

If the goods be removed, say—

And further, take notice, that the said cattle, goods, chattels, and effects are removed to, and impounded, at the common pound overt of the said parish, situate [or at my dwelling-house, situate No. in Street,] in the parish, aforesaid. Dated this day of , 1849.

G. H., Broker.

The Inventory above referred to:

In the dwelling-house—parlour, one table, &c.
In the home field—six cows, two calves, &c.

251. Some brokers add, "And all the other effects on the premises, to satisfy the said sum and costs." Or, "So much of the other effects on the premises as will satisfy the said sum and costs." But these additions are objectionable, particularly the latter one, as the goods distrained ought to be identified, (1 *Roll Abr.* 666-7.) and the former may make the distress excessive, or include articles not distrainable at the time.

252. In selecting the articles of distress, the distrainor should be careful to take those only which are not exempt from distress, and which are the most adapted in value to meet the amount of the levy and costs, without making an excessive distress.

253. In the case of a distress under the Act of 2 *W. & M.*, on corn or hay mentioned in the Statute, the same is not to be removed until replevied or sold. (No. 230.) The notice of distress may be of "corn, grain, [or hay], and effects mentioned in the Schedule hereunder written."

254. In the case of a distress on growing crops, notice is to be given as directed by the Statute.—See Nos. 233, 234.

255. *Form of Notice of Distress on growing crops.*

To Mr. , and whom else it may concern.

Take notice that by the authority of the Rev. A. B., I have distrained on the lands and premises numbered in the apportionment of the Rent-Charge of the parish of

, in the county of , the several growing crops mentioned in the Inventory hereunder written, for the sum of £ , being for arrears of Rent-Charge due to him as *Rector* of the said parish, on the 1st day of October last, for the said lands and premises, and that unless the whole Rent-Charge which shall be in arrear, with the costs and charges of such distress be sooner paid, I shall proceed to cut, gather, make, cure, carry, and lay up the same crops when ripe in some proper place, and in convenient time to appraise, sell, or otherwise dispose of the same towards satisfaction of the said Rent-Charge, and of the charges of the said distress, appraisement, and sale, pursuant to the statute. Dated, &c.

256. And when the growing crops are gathered and laid up, the following notice should be given, within one week after the lodging or depositing of them:—

To Mr. , and whom else it may concern.

Take notice that the several growing crops on which I made a distress, on the day of last [or instant], for £ , due to the Rev. A. B. for Rent-Charge, and of which you had notice, have been cut, gathered, and laid up in the barn [or some other proper place, describing it] on the premises. Dated, &c.

257. Or in case there be no barn, or proper place on the premises, then "in a certain barn belonging to Y. Z., situate and being in a certain field called , [or other proper place, describing it], at , in the parish of , in the county of ." Dated, &c.

SECTION III.

Of the Appraisement and Sale of the Distress.

258. At common law a distress could not be sold, but held merely as a pledge, and this is still the case as to distresses for damage feasant, or for suits or services.—3 *Bl. Comm.* 13.

259. But by the statute 2 & 3 *Wm. & Mary, sess.* 1. *c.* 5. *s.* 2, 3, (Nos. 229, 230.) the distress may be appraised and sold.

260. To justify an appraisement and sale, the statute expressly requires notice of the distress with the cause of the taking to be given.—See Nos. 229. 250.

261. Although the schedule to the statute 57 *Geo. III. c.* 93, applying to the costs of distresses for not exceeding 20*l.* refers to the appraisement being made by one broker or more, yet it is necessary that there be two appraisers, unless the tenant consent to the employment of a single appraiser (*Allen* v. *Flicker*, 10 *A. & E.* 640. *Bishop* v. *Bryant*, 6 *C. & P.* 484. overruling *Fletcher* v. *Saunders*, 6 *C. & P.* 747. 1 *M. & R.* 375), in which at nisi prius it had been held otherwise. A tenant may consent to waive the appraisement.—*Bishop* v. *Bryant, supra.*

262. The appraisers must be disinterested in the distress. The broker distraining must not, therefore, act as one of them.—*Westwood* v. *Corine*, 1 *Stark.* 172. *Lyon* v. *Weldon*, 2 *Bing.* 337.

263. The appraisers are to be sworn before the sheriff or under-sheriff of the county, or (which is the general practice) the constable of the hundred,

parish, or place where the distress is taken, and not the constable of the hundred where the distress is impounded.

264. The constable who swears the appraisers must attend with them at the time of the appraisement, and must swear them before they make it.—*Kennet* v. *May*, 2 *Moo. & Mal.* 56.

265. The five days allowed to the tenant must be five whole days, i. e. five times twenty-four hours. Where a distress was made on Friday at 2 P.M. and the sale was on the Wednesday following, at 11 A.M. the sale was held to have been made too early (*Harper* v. *Taswell*, 6 *C. & P.* 166). But where the distress was made on the morning of Saturday, and the sale in the afternoon of the following Thursday, it was held to be regular, because the five days expired in the morning of the latter day.—*Wallace* v. *King*, 1 *H. Blac.* 13.

266. A landlord may remain on the premises a reasonable time after the five days, for the purpose of selling the goods; but what is a reasonable time is a question for the jury (*Pitt* v. *Shew*, 4 *B. & A.* 206). But if he remains a longer time than necessary, without the tenant's consent, he becomes a trespasser.—*Griffin* v. *Scott*, 2 *Ld. Raymond*, 1424. 2 *Str.* 717; *Winterbourne* v. *Morgan*, 11 *East*, 395.

267. The appraisement and sale must be confined to the goods originally taken under the distress, and included in the inventory, and not extend to goods subsequently discovered.—*Bishop* v. *Bryant*, 6 *C. & P.* 484.

268. The statute 11 *Geo. II. c.* 19. *s.* 10, authorizes

the appraisement and sale to be made on the premises, and any person to go to such part of the premises where the distress is impounded, in order to view, appraise, and buy, and to carry off the same on account of the purchaser. (No. 236.) But this does not authorize a sale on the premises to be made by auction.

269. If the tenant requests further time before sale, and which is consented to, the tenant should be required to sign an authority to the following effect:—

I, E. F. do hereby consent that A. B., who has distrained my goods, chattels, and effects, for Rent-Charge, shall continue in possession thereof on the premises for the space of days from the date hereof, the said A. B. having agreed to forbear the sale for that time to enable me to discharge the Rent-Charge; and I do hereby agree to pay the expenses of keeping the said possession; and I undertake not to replevy the said goods, chattels, and effects. Dated this day of 1849.

270. The following consent may be added if wished:—

And I further consent that in case of non-payment of the Rent-Charge and costs, the said A. B. may sell the distress by auction on the premises if he shall think fit.

271. Under the statute 11 *Geo. II. c.* 19. *s.* 8, making growing crops a subject of distress for rent, the landlord is in convenient time to appraise, sell, or otherwise dispose of the same towards satisfaction of the rent for which such distress shall have been taken, and of the charges of such distress, appraisement, and sale, in the same manner as other goods and

chattels may be seized, distrained, and disposed of, and the appraisement thereof to be taken when cut, gathered, cured, and made, and not before. (No. 233.)

272. At the expiration of the five days, or such further time as may be given to the tenant, search should be made at the sheriff's office, to know if the goods are replevied. If they are not, and the rent and charges are not paid, the constable of the place where the distress was taken, and two sworn appraisers, should attend and appraise the goods.

273. The party is bound to sell the goods for the best price that can be obtained for them; it is not sufficient that they are sold to the highest bidder at an auction.

274. Under the Tithe Commutation Act, in distraining on Quakers for Rent-Charge, the goods shall be sold without its being necessary to impound or keep them; but it seems doubtful whether they ought to be appraised. In distresses for small sums for Rent-Charge, where the effects taken consist of silver articles, it is usual to dispense with the appraisement, but the broker carries with him scales and weights, and at the time of distress takes by weight to the precise amount. Notice of the distress should in this case be given without the clause as to replevying or impounding. In the case of distresses by virtue of the statutes for the recovery of the value of tithes before justices of the peace, an appraisement was unnecessary.

275. The following is the form of oath to be taken by the appraisers:—

You and each of you, shall well and truly appraise the goods and chattels mentioned in this Inventory according to the best of your understandings. So help you God.

276. The appraisement may be added at the end of the Inventory, thus:—

Appraised by us, this day of , 1849.

A. B.
C. D. Sworn Appraisers.

277. The appraisement is subject to the following duty by the Stamp Act of 55 *Geo. III. c.* 184.

	£.	£.	s.	d.
Not exceeding	50	0	2	6
Exceeding 50 and not exceeding	100	0	5	0
100	200	0	10	0
200	500	0	15	0
500 and upwards	1	0	0	

278. The party distraining is by the words of the Act entitled to deduct the costs of the distress, appraisement, and sale.

279. The following is a bill of charges made by a broker in the metropolis.

	£.	s.	d.
To levying distress for £84, rent due at Michaelmas last, taking an Inventory of all the effects on the premises. Making fair copy for tenant. Many attendances on the tenant, drawing two requests for further time, &c. &c. at 5 per cent.	4	4	0
Man in possession 3*s.* 6*d.* per day			
Two appraisers condemning goods 2½ per cent. each			
Stamp 5*s.* constable 1*s.*	0	6	0

250 printed bills for sale of property . . .	£0	9	6
Men posting do.	0	9	0
100 printed catalogues	0	13	6
Advertisements in Times and Morning Advertiser newspapers	0	19	6
Three men lotting goods, working at sale, delivering lots, &c.	0	19	6
Commission on amount sold, including making catalogue, clerk attending sale and delivery, 5 per cent. on gross sale			

The commission of 5*l.* per cent. on the rent due, sometimes charged by brokers for levying the distress, when the effects do not realize the amount, is evidently unreasonable. The charge for poundage by sheriffs is calculated on the net produce realized, and not on the amount of the debt, unless the whole be levied. A broker's trouble and risk is in proportion to the value of the goods seized, and not to the amount of the rent claimed, and his commission therefore should be regulated accordingly. It is doubtful, however, whether the broker is justified in charging five per cent. for the distress.

280. But the items for charges to an attorney for making distresses, as contained in books of costs in replevin, are as follows:—

Drawing authority to distrain	£0	5	0
Attending with broker making distress . . .	1	1	0
Two copies of inventory, and notice to serve and keep	0	10	0
Searching at Sheriff's office if goods replevied .	0	3	4
Paid broker			
Paid man in possession, if boarded, per day .	0	3	6
If not boarded	0	5	0

The master, however, on taxation does not allow the whole of these costs.

281. By 57 *Geo. III. c.* 93. *s.* 1, no person whatsoever making any distress for rent, where the sum demanded and due shall not exceed the sum of 20*l.*, nor any person whatsoever employed in any manner, or doing any act whatsoever in the course of such distress, or for carrying the same into effect, shall have, take, or receive, out of the produce of the goods or chattels distrained upon and sold, or from the tenant distrained on, or from the landlord, or from any other person whatsoever, any other or more costs or charges for, and in respect of such distress, or any matter or thing done therein, than such as are fixed and set forth in the schedule thereunto annexed, and appropriated to each act which shall have been done in the course of such distress; and no person or persons whatsoever shall make any charge whatsoever, for any act, matter, or thing mentioned in the said schedule, unless such act shall have been really done.

Schedule.	£.	*s.*	*d.*
Levying distress	0	3	0
Man in possession, per day	0	2	6
Appraisement, (whether by one broker or more) 6*d.* in the pound on the value of the goods .			
Stamp, the lawful amount thereof.			
All expenses of advertisements (if any such) .	0	10	0
Catalogues, sale, and commission, and delivery of goods, 1*s.* in the pound on the net produce of the sale			

282. By *sec.* 2, a party aggrieved may apply to a

justice of the peace, who may adjudge treble the amount of money unlawfully taken, to be paid with full costs, which may be levied by distress.

283. And by *sec.* 4, if the complaint be unfounded, the justice may give costs to the party complained against, not exceeding 20*s*. No judgment is to be given against a landlord unless he personally levies the distress.

284. And by the same section, no person aggrieved shall be barred from any remedy which he might have had before the passing of the Act, except so far as any complaint shall have been determined by the justice, and which judgment may be given in evidence under the general issue.

285. By *sec.* 6, every broker or other person, who shall make any distress whatsoever, shall give a copy of his charges and of all the costs and charges of any distress whatsoever, signed by him, to the person or persons on whose goods and chattels any distress shall be levied, although the amount of the rent demanded shall exceed 20*l*.

286. By 7 & 8 *Geo. IV. c.* 17, the Act is extended to tithes and Rent-Charges (therefore Tithe Commutation Rent-Charge), and also to cases of several distresses made at the same time, where the whole amount shall not exceed 20*l*.

287. The overplus (if any) after satisfaction of the rent and charges of the distress, appraisement, and sale, is to be left in the hands of the sheriff, undersheriff, or constable, for the owner's use. (No. 229.) —*Lyons* v. *Tomkies*, 1 *M. & W.* 603.

CHAPTER IX.

OF SUBSEQUENT PROCEEDINGS ON THE DISTRESS.

SECTION I.

Of satisfying the Distress by the occupier.

288. The tenant may, before the levy is made, tender the arrears of Rent-Charge without any costs, and if after such tender a distress is made it is a trespass. (2 *Inst.* 107.) Or if the tender be made with the expenses of the distress, after the distress, and before the goods are impounded, it is an unlawful detainer (*Ib. Browne* v. *Powell*, 4 *Bing.* 230. 12 *Moo.* 454); and the tenant may maintain trespass for the removal (*Vertue* v. *Beasley*, 2 *Moo. & Mal.* 21). As to growing crops, the tenant may tender the rent and expenses at any time before they shall be gathered. Tender to the landlord, or to his bailiff who makes the distress, is sufficient (*Smith* v. *Goodwin*, 4 *B. & Ad.* 413). A tender to one deputed by the bailiff is bad (*Pimm* v. *Grevill*, 6 *Esp.* 95). The Tithe Commutation Act does not give any costs for the ten days' notice of distress.

289. A tender after the distress is impounded in a public pound is insufficient (*Firth* v. *Pervis*, 5 *T. R.* 432. *Ellis* v. *Taylor*, 8 *Mee & W.* 415. *Ladd* v. *Thomas*, 4 *Per. & D.* 9); otherwise, if impounded in a private pound.—*Browne* v. *Powell*, *supra.*

290. And where the agent of the landlord went

into a field on the farm where the tenant's cattle were feeding, and placing his hand upon one of the beasts, said he distrained the whole for the rent due, counted them, and took a note of the particulars, and then went away; on the following morning he left with the tenant a notice, stating that he had distrained the whole thereunder mentioned, and had impounded them on the premises: Held, that this constituted an impounding, and that a subsequent tender of the rent and costs of distress was too late. (Maule, J. *dissentiente.*)—*Thomas* v. *Harries*, 1 *Scott, N. S.* 524.

SECTION II.

Of replevin.

291. The tenant, if he means to dispute the right of distress, may replevy, for which purpose he must within the five days after notice of the distress apply at the sheriff's office, or to one of the county or replevin clerks, with the names of two sufficient housekeepers, living in the county, as sureties: the sheriff's broker will appraise the goods, after which a bond must be entered into in double the value of the goods to prosecute the replevin with effect and without delay, and the sheriff thereupon issues his precept to an officer to redeliver the goods.

292. Replevin lies for whatever is capable of being distrained, and for nothing else, for the action is the remedy of the party whose goods are distrained.

293. If articles not repleviable be distrained, the party instead of replevying may bring an action of trover, or detinue, or trespass.

294. The right to replevy continues until the goods are sold, notwithstanding their removal and appraisement after the expiration of the five days.—*Jacob* v. *King*, 5 *Taunt.* 451.

295. If the goods of several persons not jointly interested be taken, they cannot join in replevin, but every one must have a several action. (*Co. Litt.* 145 *b.*) Tenants in common, therefore, should not join, but joint tenants or coparcenors should join.—*Willis* v. *Fletcher, Cro. Eliz.* 530. *Stedman* v. *Bates, Salk.* 390. *Bull. N. P.* 53.

296. Replevin lies either against him who takes the goods, or him who authorizes the distress, or against both. (2 *Roll.* 431. l. 5.) Replevin lies for or against executors, when the goods taken away continue still in specie in the hands of the wrong doer or his executor.—*W. Jones*, 173.

297. If the tenant or plaintiff in replevin does not enter his plaint in the county court, the bond will be forfeited; so if afterwards he does not proceed without delay in the prosecution of the suit, or if he be nonsuit, or have a verdict against him.—*Com. dig. tit. Replevin D.*

298. After a party has replevied the goods as stated in No. 291, he must enter a plaint in one of the county courts, established under the statute of 9 & 10 *Victoria, cap.* 95, for the more easy recovery of small debts and demands in England, whether the sum distrained for, or the value of the goods exceeds 20*l.*, or is under that amount.

299. For that purpose he should apply to the clerk of the court for the district wherein the distress

was taken, at the office of the court, with the names and the last known places of abode of the parties, and he must specify and describe in a statement of particulars, the cattle or the several goods and chattels taken under the distress, and of the taking of which he complains: on which the clerk of the court is to enter the plaint and issue a summons to the distrainer, *s.* 59, 60. 119, 120, of the statute, and Nos. 24, 25, 26, 27, of Rules of Practice for the County Courts in England.

300. In the particulars of the taking, the place where the cattle or goods were distrained, it is presumed, should be stated, in conformity with the practice in the superior courts.

301. In case the title to the Rent-Charge is in question, or the rent or damage in respect of which the distress shall have been taken is more than 20*l.*, the action of replevin may be removed into a superior court, on giving a bond with two sureties, as mentioned in the Act, *s.* 121. 127.

302. By the statute of the 11 *Geo. II. c.* 19. *s.* 22, defendants in replevin may avow for rent generally. So under the 5 & 6 *Vic. c.* 54, *s.* 18, the owner of the Rent-Charge may avow generally. (No. 114.)

303. For further proceedings in the County Courts, the reader is referred to the Books of Practice of the New County Courts, containing directions how to proceed in replevin, with the forms of proceedings; and for proceedings in the superior courts, on the removal of the action of replevin, the reader is referred to the Books of Practice of the Superior Common Law Courts.

304. If there was a right of distress, but the tenant dispute only the cause, or the amount, replevin is not the proper remedy, as a person may distrain for one thing and avow for another—thus, he may distrain for rent and avow for heriot service. (*Crowther* v. *Ramsbottom*, 7 *T. R.* 657.) In such case he should bring his action on the case, or otherwise, as the circumstances may require.

305. The statutes of set-off do not apply to replevin, and the plaintiff, therefore, cannot plead a set-off to an avowry for rent; but payments for land-tax or for ground-rent, which the tenant has been compelled to pay, may be pleaded as payments. A set-off, therefore, cannot in any case be made against the Rent-Charge, except payments for rates and assessments in respect of the Rent-Charge.

SECTION III.

Of illegal Distress and irregularity in the proceedings.

306. If a distress be taken of goods without cause, the owner may rescue them. So if the rent be tendered before the distress is made. But this remedy is not recommended, as it may lead to a breach of the peace.

307. After the distress is impounded, the owner cannot break the pound and take the distress out of the pound, for it is then in the custody of the law. (*Co. Litt.* 47 *b.* 160 *b.*) The offence is said to be indictable.—2 *Chitty's Crim. Law*, 204, *and the authorities there cited.*

308. And by the statute 2 *William & Mary, sess.* 1. *c.* 5. *s.* 4, the party shall be liable to treble damages. (Nos. 231. 236.)

309. If the goods are rescued, the party who distrained them may take the goods again wherever he may find them, and impound them again.—*Co. Litt.* 47 *b.*

310. If a distress and sale is made for rent where none is due, the owner may recover double the value of the goods with full costs. (See No. 232.)—*Masters* v. *Ferris*, 1 *C. B.* 715. And if the distrainor obtains entry with force, or makes the distress in the night, or after tender of the rent, or without authority, or distrains articles exempt from distress, the distress is illegal.

311. An action on the case lies for distraining for more rent than is due, although the distress is not sufficient to pay the rent due, and although the notice of distress for more rent than due is withdrawn, and the distress is sold under a notice of distress for the rent really due (*Taylor* v. *Hennike*, 4 *Per. & D.* 242. 12 *Ad. & E.* 488); but the plaintiff is entitled in such case to recover only nominal damages. —*Clarke* v. *Holford*, 2 *C. & K.* 540. *Rolfe.*

312. In case for selling goods distrained for rent without complying with the provisions of the statute 2 *W. & M. sess.* 1. *c.* 5. (Nos. 229, 230), the damages are the value of the goods distrained less the amount of the rent due.—*Whitworth* v. *Maden*, 2 *C. & K.* 517. *Wightman.*

314. But an action is not maintainable for distraining the beasts of the plough, where there is no

other subject of distress on the premises besides growing crops.—*Piggott* v. *Birtels*, 1 *M.* & *W.* 441.

315. At common law an irregularity in conducting a distress would render the party a trespasser *ab initio*; but by the statute 11th *Geo. II. c.* 19. *s.* 19, reciting that it had sometimes happened that upon a distress made for rent justly due, the directions of the statute 2 *William* & *Mary* had not been strictly pursued, but through mistake or inadvertency of the landlord or other person entitled to such rent, and distraining for the same, or of the bailiff or agent of such landlord or other person, some irregularity or tortious act had been afterwards done in the disposition of the distress so seized or taken, as aforesaid; for which irregularity or tortious act the party distraining had been deemed a trespasser *ab initio*, and in an action brought against him as such the plaintiff had been entitled to recover, and had actually recovered the full value of the rent for which such distress was taken; and that it was a very great hardship upon landlords and other persons entitled to rents, that a distress duly made should be thus in effect avoided for any subsequent irregularity; it is enacted, that where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party or parties distraining, or by his, her, or their agents, the distress itself shall not be therefore deemed to be unlawful, nor the party or parties making it deemed a trespasser or trespassers, *ab initio*, but the party or parties aggrieved by such unlawful act or irregularity shall or may recover full satisfaction for the special

damage he, she, or they shall have sustained thereby, and no more, in an action of trespass, or on the case, at the election of the plaintiff or plaintiffs; provided always, that where the plaintiff or plaintiffs shall recover in such action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the like remedies for the same as in other cases of costs.

316. By *sec.* 20, no tenant or tenants, lessee or lessees, shall recover in any action for any such unlawful act or irregularity, as aforesaid, if tender of amends hath been made by the party or parties distraining, his, her, or their agent or agents, before such action brought.

317. To bring a case within these sections of the statute, the rent must be justly due, and the distress originally lawful, as the act applies to irregularities committed after the distress. (*Lynne* v. *Moody*, 2 *Stra.* 851. 1 *Esp.* 395.) And the action must be trespass or case, according to the nature of the injury, and not at the parties' election.

318. The section applies to distresses for any kind of rent, and therefore to Tithe Commutation Rent-Charge; but not to distresses for other causes than rent.

319. And by *sec.* 21, That in all actions of trespass, or upon the case, to be brought against any person or persons entitled to rents or services of any kind, his, her, or their bailiff or receiver, or other person or persons, relating to any entry by virtue of this act, or otherwise upon the premises chargeable with such rents or services, or to any distress or seizure, sale or disposal of any goods or chattels

thereupon, it shall and may be lawful to and for the defendant or defendants in such actions, to plead the general issue, and give the special matter in evidence, any law or usage to the contrary notwithstanding; and in case the plaintiff or plaintiffs in such action shall become nonsuit, discontinue his, her, or their action, or have judgment against him, her, or them, the defendant or defendants shall recover double costs of suit.

320. The 5 & 6 *Vic. c.* 97. *s.* 2, provides that where any public act, not local or personal, gives double or treble costs, or any other than the usual costs, the party shall instead receive his full and reasonable costs, charges, and expenses incurred.

321. The 5 & 6 *Vic. c.* 54. *s.* 19, also provides that in distresses for Rent-Charge justly due, the party distraining shall not be a trespasser, *ab initio*, in respect of any irregularity committed after making the distress, and that the party may tender amends, or pay a sum with costs into court. (No. 115.)

322. And by the same Act, as altered by the 5 & 6 *Vic. c.* 97. *s.* 4, a calendar month's notice must be given previous to commencing such action. (Nos. 115, 116.)

323. The 3 & 4 *Wm. IV. c.* 42. *s.* 21, allowing a defendant, with the leave of a judge, to pay money into court by way of compensation or amends, extends to an action of trespass for an illegal distress, or on the case for an irregularity in conducting it.

324. A party distraining is, *primâ facie*, liable for the acts of his bailiff in taking goods privileged from distress, although they never come to his hands. But

if he disclaims when he knows the circumstance, and repudiates the act, he is not bound by it.—*Hurry* v. *Rickman*, 2 *Moo. & Mal.* 126. *Lewis* v. *Read*, 13 *Mec. & W.* 234. 14 *Law J. N. S. Exch.* 295.

325. When the charges are excessive, the tenant may maintain an action on the stat. 2 *Wm. & Mary*, for not leaving the overplus in the hands of the sheriff, under-sheriff, or constable; the overplus in the Act meaning the overplus after payment of the rent and the reasonable charges.—*Lyon* v. *Tomkies*, 1 *M. & W.* 603.

326. But a landlord who does not personally interfere in the distress, is not liable for the neglect of the broker in not delivering a copy of his charges.—*Hart* v. *Leach*, 1 *M. & W.* 560.

327. Where the goods of a testator have been carried away in his life-time, the executor may maintain trespass against the wrong doers, 4 *Ed. III. c.* 7, and the same as to administrators, 31 *Ed. III. c.* 11, and executors of executors, 25 *Ed. III. c.* 5. And the right of action for injuries to real or personal estate, survive to and against executors and administrators, 3 & 4 *W. IV. c.* 42. *s.* 2.

328. By the 3 & 4 *Vic. c.* 24. *s.* 2, the plaintiff in any action of trespass, or on the case, if he recover by the verdict of a jury less than forty shillings damages, whether upon issues tried, or judgment by default, shall not be entitled to any costs whatever, unless the judge or presiding officer immediately afterwards certify that the action was really brought to try a right, besides the mere right to recover damages for the trespass or grievance for which the

action shall have been brought, or that the trespass or grievance in respect of which the action was brought, was wilful and malicious. But, by *s.* 3, this is not to extend to any trespass, in respect of which any notice [*i. e.* written notice] not to trespass shall have been served, as directed by the Act.

329. This statute has been a great check to trifling actions, and has induced defendants frequently to suffer a case to go before the sheriff's jury, on a judgment by default, the expense of the defence in such case being much less than defending and going to the assizes.

330. It does not apply, however, to a case where judgment has been given for the plaintiff, upon demurrer. (*Taylor* v. *Rolfe*, 8 *Jurist*, 35.) And where a trespass is committed after notice (although verbal) not to commit it, the judge has power to certify that it was wilful and malicious, so as to entitle the plaintiff to costs, and although no express malice be proved.—*Sherwin* v. *Swindall*, 8 *Jurist*, 580.

331. A party may bring an action for an illegal or excessive distress, in one of the small debts courts, where the damages claimed do not exceed 20*l.*; and if not more than 5*l.*, the action is not removable into a superior court. But if the title to any corporeal or incorporeal hereditament be in question, the small debts courts have no jurisdiction, *s.* 58, 90 of 9 & 10 *Vict. c.* 95.

332. And if he proceeds in the superior court, where he could proceed in the small debts court (except where the plaintiff dwells more than twenty miles from the defendant, or where the cause of

action did not arise wholly, or in some material point within the jurisdiction of the court within which the defendant dwells, or carries on his business, or where any officer of the county court shall be a party), and he recovers a verdict for less than 5*l.*, (such action being an action of tort), the plaintiff shall not recover costs; and if a verdict shall not be found for the plaintiff, the debt shall be entitled to costs as between attorney and client; unless in either case the judge certify that the action was fit to be brought in such superior court, *s.* 128, 129.

SECTION IV.

Of excessive Distress.

333. By statute 51 *Hen. III. s.* 4, distresses are to be reasonable after the value of the debt or demand, and by the estimation of neighbours, and not by strangers, and not outrageous.

334. And by the statute of Marlbridge, 52 *Hen. III. c.* 4, and confirmed by 28 *Edw. I. stat.* 3. *s.* 12, moreover, distresses shall be reasonable, and not too great, and he that taketh great and unreasonable distresses shall be grievously amerced for the excess of such distresses.

335. If the lord distrain two or three oxen for twelve-pence, it is unreasonable. So if he distrain a horse or an ox for a small sum, it is excessive, unless there be no other distress on the land.—2 *Inst.* 107.

336. It is not for every trifling excess that this

action is maintainable. It must be disproportionate to some excess. There is a distinction between cases where one article only can be taken, and where several can be taken. If there be but one thing which can be taken, so that it must be distrained or the party must be without his remedy, though it considerably exceeds the sum due, still no action lies. But if there be several things distrained, which appear to be much more than sufficient, the party may resort to this action for an excessive distress. —*Per Lord Ellenborough, in Field* v. *Mitchell.* 6 *Esp.* 71.

337. A tithe-owner seized under a distress for Rent-Charge, a rick of wheat. The wheat, without the straw, was more than sufficient to satisfy the distress. The tenant was under agreement with his landlord to consume the straw on the premises. The tithe-owner sold the rick on the terms that the purchaser should leave the straw on the premises, held, he was justified in so doing, and that he was not bound to sell the wheat and straw together, and consequently the distress was not excessive.—*Roden* v. *Eyton,* 12 *Jur.* 921, *C. P.*

338. There can be no remedy on the statute of Marlbridge where there is a remedy at the common law, nor if the plaintiff has recovered in replevin, can he afterwards bring an action on that statute; for an action on that statute is founded on there being a cause of distress, of which the recovery in replevin shows there was none. Moreover, in replevin, damages were recoverable for the taking, and a man shall not be permitted to say there was a cause of

distress, after he has recovered upon the ground of its being unlawful.—*Gilb. dist.* 68.

339. A distress cannot be severed, therefore a horse and cart may be distrained for a small demand, if there is no other distress.—*Clarke* v. *Tusket*, 2 *Vent.* 183.

340. An action will lie for an excessive distress, although the goods are not removed so as to prevent the tenant carrying on his business.—*Bayliss* v. *Fisher*, 7 *Bing.* 153.

341. An arrangement between the parties respecting the sale of the goods, or the rent, does not prevent the right of action for an excessive distress.—*Holland* v. *Bird*, 3 *M. & S.* 363; 10 *Bing.* 15. *Willoughby* v. *Backhouse*, 2 *B. & C.* 821.

342. In an action for an excessive distress, the question is what the goods would have sold for at a broker's sale; if it be excessive, the plaintiff is entitled to recover the value of the excess sold.—*Wells* v. *Moody*, 7 *C. & P.* 59.

343. An action for an excessive distress may be maintained where the excess consists wholly in seizing growing crops, the probable produce of which is capable of being estimated at the time of the seizure, but the measure of damages is not the value of the crops, but the inconvenience and expense which the tenant sustains in being deprived of the management of them, or which he is put to in procuring sureties to a larger amount than he would otherwise have to do in replevying the crops.—*Piggot* v. *Birtels*, *M. & W.* 441.

344. As to costs and proceeding in new county courts, *see* Nos. 328, 329, 330, 331, 332.

CHAPTER X.

OF THE PROCEEDINGS TO RECOVER POSSESSION.

See No. 106.

SECTION I.

When the proceedings may be taken.

345. *In case the Rent-Charge be in arrear for forty days.* The section giving the remedy by Entry requires the Rent-Charge to be in arrear for the space of forty days. This proceeding, therefore, may be taken on the 11th February for Rent-Charge due the 1st of the preceding month of January; on the 12th May for Rent-Charge due the 1st April; on the 11th August for Rent-Charge due the 1st July; and on the 11th November for Rent-Charge due the 1st October.

346. It does not appear requisite that any previous notice of intention to distrain should be given. Proceedings have been taken to recover possession without such notice, yet in the cases where applications have been made to the court, or to a judge to set aside the proceedings, no question has been raised on this point.

347. A demand of Rent-Charge is only a formal means to recover that which is due, and therefore it may be demanded after it is behind, at any

time, whether the tenant be present or no; for remedies for rights are ever favourably extended; for this is not like a demand of rent upon condition, because that is penal, and overthroweth the whole estate.—*Co. Litt.* 153 *b.*

348. And where a Rent-Charge was granted, with power to the grantee, in case the Rent-Charge should be in arrear for a certain space of time, to enter and enjoy the lands charged, and to receive the rents for his own use until satisfaction of the arrears, it was held that the grantee may, upon the rent becoming arrear, maintain ejectment against the terre tenant, without proof of a previous demand of the Rent-Charge.—*Doe* v. *Horsley*, 1 *A. & E.* 766.

349. The notice, however, being in effect a demand of the Rent-Charge, (although no formal demand is necessary,) and as it may probably lead to the payment of it, and the difficulty of service having been removed by the Act of the 5 & 6 *Vict.* it may be advisable to serve or affix it on the premises.

350. But, at all events, where there is any doubt as to there being a sufficient distress, the notice should be given, and the broker go to distrain.

351. *No sufficient distress.* The Act 2 *W. & M. sess.* 1, *c.* 5, *s.* 2, directs the goods and chattels to be sold towards satisfaction of the rent and the charges of the distress, appraisement, and sale (No. 229). Therefore, if the effects on the premises would not satisfy the Rent-Charge, with these charges, they are insufficient as a distress.

352. Between landlord and tenant, under the stat. 4 *Geo. II. c.* 20, it was held that every part of the

premises must be searched (*Rees* v. *King*, cited 2 *B. & B.* 514; *Forest*, 19); unless the tenant prevented the landlord from having access to the premises, as by locking the doors; for a distress which cannot be made without a trespass is no available distress within the Act.—*Per Tenterden, C. J.*; *Doe* v. *Dyson*, *M. & M.* 77.

353. And Mr. Baron Alderson, Mr. Justice Wightman, and Mr. Justice Cresswell, have issued orders for writs to assess arrears of Rent-Charge in Camberwell and Kennington, where admission to the premises for the purpose of distraining has been refused by the occupiers, and they keeping their gates fastened.—*Re Camberwell Rent-Charge, Allotments* 590, 679, 682, *Re Kennington Rent-Charge Allotments* 208, 901, 938, 939, 953.

354. Between landlord and tenant, it was held, that evidence that there was no sufficient distress on the premises on a certain day between the day when the rent became due and the service of the declaration in ejectment, was sufficient *primâ facie* evidence of there being no sufficient distress.—*Doe* v. *Fuchau*, 15 *East*, 286.

355. In the case of the *Camberwell Rent-Charge, Allotment* 606, *Hilary Term*, 1843, *Q. B.*, where it appeared that the owner of the Rent-Charge had permitted the arrears to run for four half-years, and that during each half-year, and up to a period after the twenty-one days from the fourth half-year becoming due, there had been a sufficient distress; it was held that the owner of the Rent-Charge was not bound to distrain every half-year, or immediately

after the expiration of the twenty-one days, but that the statute was satisfied by there being no sufficient distress when the owner of the Rent-Charge went to distrain, and the Court discharged the rule to set aside the proceedings with costs.—7 *Jur.* 128. 12 *Law J. N. S.* 155. 4 *Ad. & E. N. S.* 151. 3 *Gale & D.* 365.

356. It will, however, be observed, that the 84th section, as to Quakers, is very strong,—that no writ is to issue unless the Rent-Charge be in arrear for forty days, without the person entitled thereto being able to find goods on the premises or elsewhere. The true construction of this clause, however, seems to be, that if the owner of the Rent-Charge is unable to find goods at the time he determines on making the distress, it is sufficient. Otherwise he must give notice of distress on the 11th day after the Rent-Charge becomes due, and from the 21st to the 40th day watch and seek for effects, which, as observed by Mr. Justice Patteson, in the case just alluded to, could never have been the intention of the legislature;—and also otherwise it would be necessary to oppress the Quakers by half-yearly distresses. The present participle, "being," and not the past, "having been," favours the interpretation here contended for.

357. A distinction, however, must be made between there being in fact sufficient property in value upon the premises, and there being in law a sufficient distress. Not only may the property be privileged from distress, but the expense and loss in converting it into money are to be considered. A

field of grass, for instance, may of itself be sufficient to satisfy the arrears, but to place one man on it by day, and another by night, until it is fit to be cut, (which would be necessary if there be no covered building on the field,) may render it, after paying the expenses, insufficient.

358. In the case of the *Camberwell Rent-Charge, Allotments* 232, 236, and 241, 242, application was made to set aside writs to assess the arrears of Rent-Charge, on the ground that there was property to a considerable amount on the premises. The allotments were nursery-grounds and market-gardens, and the property consisted not only of shrubs and flowers, but also of cabbages, lettuces, and the like vegetables. The application, however, was afterwards abandoned, prior to the hearing before the Judge, the Counsel who made it having discovered that such effects were either not the subjects of distress, or that if distrainable, the keeping possession until ripe, and the gathering of the produce with the appraisement and sale, would be attended with greater expense than the same would realize on sale. But it is conceived that a growing crop of cabbages, or lettuces, or the like vegetables, is not a product within the statute 11 *Geo.* II., No. 233.

359. It has already been observed, (Nos. 352, 353,) that to constitute a sufficient distress, it must be such as the distrainer can obtain without committing a trespass, or otherwise infringing the law.

360. *On the premises liable to the payment thereof.* These words apply to the premises primarily charged, and do not necessarily include allotments in the parish

held by the occupier as owner, or under the same landlord. The Rent-Charge is apportioned among the lands of the parish, *s.* 33, 53, and the amount is charged upon the particular allotment, *s.* 55, and to be issuing thereout, *s.* 67, and in *s.* 81 and 82, the particular allotments seem to be considered as the lands liable to the payment, and although, by *s.* 85, the lands in the parish, held by the same occupier, either as owner, or under the same landlord, are made liable to be distrained or entered upon for the arrears of Rent-Charge, yet if there is no sufficient distress on the premises primarily charged, the writ may be issued, except in the case of Quakers. *Re Hammersfield Rent-Charge Exch. Hilary Term*, 1849.

SECTION II.

Of the Application for the Writ to assess the arrears of Rent-Charge.

361. *Any Judge of the Courts at Westminster.* The Court is not authorized to order the writ to be issued. The application is to be made to one of the Judges at chambers, which hitherto has been done *ex parte*, without previously summoning the landowner or occupier. The question whether the application should be made *ex parte*, or upon summoning the party, was argued before the Court of Exchequer, in Re Hammersmith Rent-Charge, in Hilary Term, 1849, the Court has not yet given its decision, but the majority of the Court were of opinion, that the order should be made *ex parte*.

SECTION III.

Of the Affidavit.

362. *Upon Affidavit of the facts.* The affidavit should set out the agreement or award for the Commutation of the Tithes, and the apportionment, so far as they apply to the apportioned Rent-Charge in arrear.

363. If the person entitled to the Rent-Charge has become owner of the Rent-Charge since the Commutation, the fact should be shown.

364. The affidavit should also state what half-yearly sums are in arrear, and that one of them, at the least, has been in arrear for the space of forty days after it became due.

365. There must also be an affidavit of there being no sufficient distress. This affidavit ought to be made by a third person, who could, on any future occasion, if necessary, testify to the fact. The affidavit of a sworn appraiser, or some one cognizant of such matters, would be preferable.

366. If there is property on the premises, the ten days' notice of intention to distrain should be served, and at the expiration thereof, attendance should be given for the purpose of making the distress, and admittance to the premises demanded; and, if necessary, a previous written appointment may be given. If the occupier refuses to permit or give access, the distress cannot be made, and, conse-

quently, there would, in such case, be no sufficient distress.—See Nos. 352, 353.

367. The affidavit of the Rent-Charge being unpaid should be made by the owner of the Rent-Charge, if convenient, and in which his collector, if he employs one, should join, and the facts should be deposed to positively. But if the collection of the Rent-Charge is left wholly to the collector, or if from other circumstances he can swear positively to the non-payment, his affidavit of this fact would be sufficient.

368. Likewise the affidavit of there being no sufficient distress should be positive. The affidavits should, in fact, form a complete and conclusive case on the part of the owner of the Rent-Charge, to entitle him to the remedy by entry.

369. An affidavit that there was no sufficient distress when search was made shortly before the issuing of the writ, is *primâ facie* evidence that there was no sufficient distress at the time of issuing the writ (No. 354). But it must be remembered that, if at the time of issuing the judge's order, and the writ, there be sufficient distress, although there was not at the time search was made, the writ might be considered irregular. Not more time should intervene, therefore, between the search for distress and the application for the writ, and the issuing of it, than possible.

SECTION IV.

Of the Order.

370. *To Order.* The affidavits being laid before a judge at chambers, he will order the writ to issue. The judges seem to make these orders almost as of course, leaving the responsibility to the party making the application. The materials for the application, therefore, require the greater caution in their preparation.

371. The order should be drawn up on reading the affidavits laid before the judge. Care should be taken that there is no omission in this respect.

372. The order should be in the words of the statute, or in words to the like purport or intent.

SECTION V.

Of the Writ for assessing the arrears of Rent-Charge.

373. The statute authorizing a judge to order the writ to be issued, in effect authorizes the issuing of the writ thereon. The writ is in practice issued out of the Court in which the affidavit is entitled, in like manner as other writs. This was, no doubt, the intention of the Act.

374. The writ is to be directed to the sheriff of the county in which the lands chargeable with the

Rent-Charge are situated, requiring the sheriff to summon a jury to assess the arrears of Rent-Charge, and to return the inquisition to one of the Courts at Westminster, and may be made returnable on any day in term or vacation.

375. There can be no doubt that this writ may be tested in vacation, and it should be tested on the day of the issuing. Otherwise, where the Rent-Charge becomes due the 1st January, or the 1st July, the writ could not issue until the following term; whereas the statute authorizes its being issued on the 42nd day. The old rule of practice that a writ could be tested only in term time, having been innovated upon in respect of writs of summons, and some other processes, there can be no objection to the writ for assessing the arrears of Rent-Charge being also tested in vacation.

376. The return should be made three or four weeks after the time at which it is expected the writ will be executed before the sheriff, in order to meet any unforeseen circumstance which might cause the execution of it to be postponed. The three or four weeks would afford time to effect another service of the copy of the writ, or notice of executing it, if requisite, without getting the return of the writ enlarged.

377. It is important that the statements contained in the writ correspond with, and be fully warranted by the affidavits laid before the judge.

SECTION VI.

Of the Service of the Copy of the Writ and Notice.

378. *A Copy of which writ.* Proceeding under a statute, its provisions should be strictly complied with; the copy should therefore be very carefully compared with the original.

379. *And notice of the time and place of executing the same.* The notice should accompany the copy writ, and may be endorsed upon it; otherwise the notice should refer expressly to the writ, of which a copy shall have been served. The time and place of executing the writ must both be stated, and it is better to name some hour, as in the case of writs of inquiry.

380. *Shall be given to the owner of the land, or left at his last known place of abode, or with his known agent.* The owners of the land are not only the freeholders, but also any person entitled for life or lives, or for years, by any lease or agreement for a lease on which a rent less than two-thirds of the clear yearly value shall have been reserved, and of which the term shall have exceeded fourteen years from the commencement thereof, and any person holding under any extent or elegit, or other writ of execution, or as a receiver under any order of a court of equity. (Sect. 12 *of the original Act.*)

381. The service, when made under the original Act, should be on all those owners, or at their respective last known places of abode, or with their

known agents. It does not appear clear whether service of the copy writ and notice, with the known agent, may be effected by leaving them at his residence; but it is presumed that such service is intended, and would be sufficient. Under the original Act, it was found necessary, in some cases, to serve as many as four or five different owners.

382. The difficulty of service is removed by the Act 5 & 6 *Vict. c.* 54, *s.* 17, by which service of the copy writ and notice upon any person occupying or residing on the land chargeable with the Rent-Charge, or in case no person be found thereon, then affixing the same in some conspicuous place on the land, shall be deemed good service. (No. 113.)

383. *Ten days previous to the execution thereof.* The statute 14 *Geo.* II. *c.* 17, *s.* 4, provided that no cause should be tried at the assizes, unless notice of trial has been given at least ten days before such intended trial. Yet, under this statute, notice of trial on the 1st for the 11th, has always been considered sufficient.

384. And in proceedings at common law, where any number of days are mentioned without requiring them to be clear days, one day shall be inclusive, and the other exclusive. (*Rule, Hilary Term,* 2 *Wm.* IV. *s.* 8.) Under this rule, notice on the 1st for the 11th would be ten days' notice; but if ten clear days' notice was required, notice must be given on the 1st for the 12th.

385. The stat. 2 *W.* & *M.* (No. 229,) which authorizes a sale after the expiration of five days from notice of the distress, was held to mean five whole

days, or five times twenty-four hours, and a distress at 2 p.m. on Friday, did not permit a sale on the following Wednesday at 11 a.m.; but where the distress was made in the morning of Saturday, it was held that a sale might be made on Thursday afternoon following. (No. 265.)

386. And the statute in question requiring ten days' notice, previous to the execution of the writ, to be given, there may be some doubt whether ten entire days are not requisite; for instance, notice before eleven o'clock on the 1st, for eleven o'clock on the 11th, and that notice in the afternoon of the 1st, for eleven o'clock on the 11th, would be insufficient.

387. To avoid any question, therefore, as to the sufficiency of the notice, it would be better, when practicable, to give ten clear days' notice, that is, notice on the 1st for the 12th.

388. In common law proceedings, all notices must be served before nine o'clock at night, but the rule does not apply to the service of process. The rule therefore cannot apply to writs under the Tithe Commutation Act, and, it is conceived, not to the notice of executing the same, these documents not forming part of ordinary law proceedings.

389. The service, however, on Sunday would be void.—*Stat.* 29 *Car. I. c.* 7, *s.* 6.

390. If it is intended to attend the execution of the writ by counsel, notice to that effect must be given, otherwise the master will not allow the expense in the costs.

SECTION VII.

Of the Countermand of the Notice, and Re-issuing the Writ.

391. No provision is made by the statute for the case of the owner of the Rent-Charge not executing the writ according to the notice; nor for giving costs to the land-owner by reason of the default; nor is there any direction given as to countermanding the notice, in case the owner of the Rent-Charge should wish to do so.

392. In cases of writs of inquiry of damages in actions at law, the plaintiff is allowed to countermand the notice of executing the writ two days before the day appointed for executing it (excluding Sunday)—If the execution of the writ to assess the arrears of the Rent-Charge is to be deferred, it may be assumed that the Courts would approve of notice of countermand being given; and from analogy to writs of inquiry, they would, in such case, expect at the least two days' notice (excluding Sunday), that is, Monday for Wednesday, or Friday for Monday, to be given; and in default of such notice of countermand, the Courts might be induced to order the land-owner to be paid his costs of the day, if they have the power to do so; and, if they have not, and the owner of the Rent-Charge has occasion to make any further application in the matter, he might possibly be put under the terms of paying such costs to the

land-owner as the condition on which his application would be granted.

393. If the execution of the writ is postponed, and it becomes necessary to enlarge the day of the return in the writ, it may be doubtful, if the copy of the writ has been served, whether the return may be altered without a further order of the judge. On writs of trial before the sheriff, the parties have taken upon themselves to extend the return and get the writ resealed; but it does not follow that the same liberty may be taken with a writ to assess arrears of Rent-Charge, especially if the return day mentioned in the writ be past before the alteration and reseal-ing take place, the writ being then spent.

394. But even as to writs of trial, Mr. Justice Coleridge, in *Thomas* v. *Stanway*, 8 *Jurist*, 668, said, "If by reason of adjournment, or any other matter or cause, the return day arrives before the cause is tried, the plaintiff resealing the writ, which he must, or at least may do, inserts some later day for the return without any new authority from the judge. I advisedly use the words 'may do,' for I would not be understood as intimating a doubt but that on application to a judge, an order may be made for enlarging the time for the return of the writ."

395. The learned judge, in the case referred to, seems to intimate, that the more regular course would be to obtain an order of a judge for the alteration in the writ of trial, and which shows the caution which ought to be exercised in making a writ for assessing arrears of Rent-Charge returnable, and if

it be necessary to alter the return, the propriety of obtaining the authority of a judge.

396. The first order, it is conceived, is satisfied by the issuing of one writ, and would not authorize the issuing of a second or an alias writ.

397. A copy of the writ, whether it be the original altered, or a new one, would have to be served as before mentioned, the tithe act specially requiring that a copy of the writ upon which the inquisition is founded be served; and also a fresh notice of executing the writ must be given.

398. The course pursued by the author in such a case, under the tithe act, has been to begin *de novo*, having fresh affidavits and obtaining another order; but to prevent any objection on the ground of a former writ having been issued, he has mentioned in the affidavit that a former writ was issued but not executed. The order may be drawn up in such case for an "alias" writ, and the writ may command the sheriff, "as before he was commanded;" these words however, are unnecessary, and perhaps had better be omitted. The statement in the affidavit can do no harm, but in some measure it connects the proceedings.

399. If the copy of the writ has not been served, and nothing has been done upon the writ, the writ may be said to be in the owner of the Rent-Charge's own hands, and he may be at liberty to alter the return like any clerical error, getting the writ re-sealed.

SECTION VIII.

Of the Execution of the Writ.

400. *The Sheriff is hereby required to execute such writ.* The writ should be lodged with the sheriff three or four days before the time appointed for executing it.

401. The sheriff will, as of course, obey the writ. On the day appointed, the solicitor of the owner of the Rent-Charge must attend with the necessary proofs. But a solicitor acting as advocate, cannot be examined as a witness.—11 *Jur.* 44.

402. In a case which came before the under-sheriff of Surrey, the under-sheriff was disposed to think that the party was bound, on the execution of the inquiry, to prove the service of the writ, which involved not only the question of due service on some person, but whether that person was the owner, or (as in that case) the agent of the owner of the land. In consequence of which, the opinion of a gentleman at the bar, of considerable experience, was taken on the evidence, and the under-sheriff has since acted on his opinion in several cases. The case and opinion being important for the guidance of parties who may have to execute similar writs, are here stated.

403. *Case.*

"The accompanying writ is is sued pursuant to the 6 & 7 *Wm. IV. c.* 71.

"On the execution of it the under-sheriff required,

"The production of the apportionment under the seal of the Commissioners.

"The production of the demise, and proof of the execution of it by the Vicar.

"The production of the London Gazette, showing the averages.

"Proof that there was no sufficient distress.

"Proof of service of the copy of the writ and notice on the land-owner or his agent.

> "Your opinion is requested as to the evidence necessary to be given on the execution of the writ;—Whether the whole of the above evidence, and, in particular, proof of the execution of the lease, and service of the copy of the writ and notice endorsed, ought to be given? or that there was no sufficient distress?"

Opinion.

"I am of opinion that the only thing that is to be inquired into upon this writ, is the value of the arrears of Rent-Charge. I think the sheriff is bound to assume that the recitals in the writ are true. The only evidence that is necessary, is the production of the apportionment under the seal of the Commissioners, and the production of the London Gazette to prove the averages. I think it is not necessary to produce or prove the lease to the lessee, or service of the writ and notice, or that there was no sufficient

distress. If the recitals in the writ are untrue, or if sufficient notice of the inquiry has not been given, it would be a ground for setting aside the writ, or the inquiry under it, as the case may be. But the sheriff has nothing to do with any inquiry of that nature.

"It may be necessary to produce the apportionment as above suggested; but I doubt whether in strictness it would be necessary to do more than produce the Gazette to prove the averages."

"Temple, May 4, 1841."

404. It is advisable therefore, on the execution of the writ, to produce the apportionment, although, according to the opinion taken, it is in strictness unnecessary. The production of the London Gazette is absolutely necessary, and some one ought to prove what, according to the averages, is the variation on the Rent-Charge in question. The collector, if one is employed, ought to be able to prove the calculation of the averages, and he could prove the amount in arrear; but the proof of payment, in strictness, lies on the land-owner.

405. The oath to be administered to the foreman of the jury may be—

You shall well and truly assess the arrears of the amount of the Rent-Charge apportioned on the land and premises numbered in the apportionment, and a true verdict give according to the evidence. So help you God.

and to the rest of the jury—

The same oath the foreman has taken on his part, you and each of you shall well and truly observe and keep on your part. So help you God.

406. The oath to the witnesses may be thus:—

The evidence that you shall give to the sheriff and jury, on the execution of this writ for the assessment of arrears of Rent-Charge, shall be the truth, the whole truth, and nothing but the truth, So help you God.

407. In an action at law, the judgment by default admits the liability of the defendant to some damages in respect of the breach or grievance alleged in the declaration, and on a writ of inquiry of damages, the jury must return some amount of damages, however small. But under a writ to assess the arrears of Tithe Rent-Charge there is no such admission, and if the land-owner shows payment of the Rent-Charge, or of rates to the amount thereof, on behalf of the owner of the Rent-Charge, it will be the duty of the jury to return accordingly, that there are no arrears of the Rent-Charge. So if the London Gazette be not produced, the jury cannot return any arrears, as there will be no evidence before them of any advertisement of the prices of corn having been inserted therein, on which the payment of the Rent-Charge is founded.

408. The writ having been executed, the sheriff will return the inquisition on application to him, but it may be proper to supply him with the form for that purpose.

SECTION IX.

Of the Costs.

409. *The Costs shall be taxed.* On the return of the inquisition, judgment is to be signed; no roll seems necessary; afterwards the costs may be taxed.

410. If any one appears in the proceedings on the part of the land-owner or occupier, notice should be given of taxing costs.

411. In case the jury find that there are no arrears of the Rent-Charge, the statute does not give costs to the land-owner.

SECTION X.

Of the Writ of Possession.

412. *And thereupon the owner of the Rent-Charge may sue out a writ of habere facias possessionem.* The words of the section seem to sanction this writ being tested in vacation; but it is more convenient (if not requisite) to make it returnable in term time, not further than the next term after it is issued.

413. The sheriff will in due course execute the writ. Some one must attend to point out the land and receive possession, every living thing, and goods, being turned off before giving possession. The party receiving possession should lock or fasten up the gate or other entrance.

414. The writ will be returned by the sheriff on being applied to, and which it is recommended to obtain.

415. *Not more than two years' arrears.* Like proceedings by distress, the arrears are confined to two years; but in this case, over and above the time of such possession.

SECTION XI.

Forms of Proceedings.

The following forms may be found useful, as precedents, but they must of course conform to the agreements or awards and apportionment, and other circumstances of the case:—

416. *Form of Affidavit.*

In the Queen's Bench,
(Common Pleas or Exchequer of Pleas.)

The Rev. A. B. of in the county of Clerk, and C. D. of in the county of Sworn Appraiser, severally make oath and say; and first this deponent A. B. for himself saith that by articles of agreement for the commutation of tithes of the parish of in the county of in pursuance of the Act for the Commutation of Tithes in England and Wales, made and executed at a meeting duly called and holden in the said parish on the 1st day of June, in the year of our Lord 1840, by and between the several bodies politic and persons owners of land within the said parish, by whom or by whose agents duly authorized in

that behalf the same agreement was executed, and the interest of which land-owners in the lands of the said parish was not less than two-thirds of the lands therein, subject to tithes of the one part; and this deponent A. B. Rector of the said parish, and owner of all the tithes as well great as small thereof of the other part: It was ageeed that the annual sum of £500 by way of Rent-Charge, subject to the provisions of the said Act, should be paid to this deponent, the said A. B., as Rector of the said parish, and to his successors, instead of all the tithes, as well great as small, of the lands of the said parish subject to tithes (including tithe of glebe), and instead of all moduses and compositions real and prescriptive and customary payments payable in respect of all the lands of the said parish or the produce thereof, a summary description of which lands was contained in the schedule annexed to the said agreement. And it was thereby further agreed that the lands included in the said agreement should be discharged from the payment of tithes (except as excepted in the said Act) from the first day of October next preceding the confirmation of the Apportionment of the Rent-Charge thereinbefore agreed on; and that the first payment of such Rent-Charge should be made or be receivable on the expiration of six calendar months from the time from which the said lands were discharged from the payment of tithes; and which said agreement was on the 1st day of September, in the year of our Lord 1840, confirmed by the Tithe Commissioners for England and Wales, under their hands and seal. And this deponent A. B. further saith, that by an Instrument of Apportionment of the total sum agreed to be paid by way of Rent-Charge in lieu of tithes, amongst the several lands of the said parish, confirmed by the said Tithe Commissioners for England and Wales under their hands and seal on the 30th day of September,

in the year of our Lord 1841, the sum of 2*l.* 3*s.* 4*d.* per annum was apportioned as Rent-Charge payable to the Rector of the said parish upon certain land numbered 100 in the plan annexed to the said Apportionment, and which is in the said Apportionment described as the Home field, and cultivated as arable, and to contain in quantity in statute measure 6*a.* 2*r.* 2*p.* And this deponent further saith, that after the lands of the said parish were discharged from the payment of tithes as aforesaid, and after the commencement of the said Rent-Charge as aforesaid, two half-yearly payments of the amount of the said Rent-Charge apportioned on the said land and premises, numbered 100 in the plan annexed to the said Apportionment, according to the prices of corn as provided by the said Act, became due and payable, that is to say, one half-yearly payment thereof on the 1st day of October, in the year of our Lord 1848, and one other half-yearly payment thereof on the 1st day of April in the year of our Lord 1849, and the same have been in arrear and unpaid for the space of forty days next after the said days of payment, when the same became due respectively, and still are in arrear and unpaid to this deponent the said A. B. And this deponent C. D. for himself saith, that on the 1st day of September instant, he, this deponent, attended at the said lands and premises numbered 100 in the plan annexed to the said Apportionment, and searched and viewed the same, to ascertain whether there was any and what distress thereon, to satisfy the arrears of the said Rent-Charge, but that at the time he this deponent so searched and viewed the said lands and premises as aforesaid, there was no sufficient distress on the said premises for the arrears of the said Rent-Charge, nor is there now any sufficient distress thereon for the same, to this deponent's knowledge or belief.

Sworn by both the deponents A. B. and C. D. at in the county of , this day of 1849, before me. } A. B. C. D.

Where there are more deponents than one, their names must be stated in the Jurat.

The deponents may of course make separate affidavits.

The affidavit may be endorsed thus:—

In the Queen's Bench,

Re Rent-Charge.

Allotment No.

Affidavit on application for an order for a writ to be issued, directed to the sheriff of , requiring the said sheriff to summon a jury to assess the arrears of Rent-Charge apportioned on land numbered 100 in the plan annexed to the Apportionment, pursuant to the statute 6 & 7 *Wm. IV. c.* 71, *s.* 82.

417. *Another form of Affidavit.*

In the Queen's Bench,

(or Common Pleas, or Exchequer of Pleas.)

A. B. of in the county of , Esq. E. F. of in the county of , Gent., and C. D. of in the county of , Sworn Appraiser, severally make oath and say: and first this deponent E. F. for himself saith, that by provisional articles of agreement for the commutation of tithes of the parish of , in the county of , in pursuance of the Act for the Commutation of Tithes in

England and Wales, made and executed at a meeting duly called and holden, and adjourned from time to time and holden by adjournment in the said parish on the 1st day of June, in the year of our Lord 1840, and afterwards perfected according to the provisions of the said Act, by and between the several bodies politic and persons owners of land within the said parish, by whom or by whose agents duly authorized in that behalf, the same agreement was executed, and the interest of which land-owners in the lands of the said parish was not less than two-thirds of the lands therein subject to tithes, of the one part, and G. H. impropriate rector of the said parish, and the Rev. I. K. vicar of the said parish, which said impropriate rector and vicar are as such respectively owners of all the tithes as well great as small of the said parish of the other part. It was amongst other things agreed that the annual sum of 500*l.* by way of Rent-Charge, (subject to the provisions of the said Act, and subject also to the variation in respect of the charge upon hop-grounds and market-gardens thereinafter mentioned and agreed upon,) should be paid to the said I. K. as vicar of the said parish, and to his successors, instead of all the vicarial tithes of the lands of the said parish subject to tithes (including vicarial tithe of glebe), and instead of all moduses and compositions real, and prescriptive and customary payments, payable to the vicar, in respect of all the lands of the said parish or the produce thereof, a summary description of which lands was contained in the schedule annexed to the said agreement. And it was thereby further agreed, that the Tithe Commissioners for England and Wales should fix the rate per imperial acre, which should be deemed the extraordinary charge payable in respect of lands cultivated as hop-grounds or market-gardens, and that if any of such lands should thereafter cease to be cultivated as hop-

grounds or market-gardens, and should be restored to an ordinary course of husbandry, they should then cease to pay such extraordinary charge, and that the said annual vicarial Rent-Charge of 500*l.* should be to that extent reduced, and on the other hand, if any lands within the said parish should after the date of the said agreement be newly cultivated as hop-grounds or market-gardens, the same should be subject to the extraordinary charge per imperial acre to be fixed in manner aforesaid, and the said annual vicarial Rent-Charge of 500*l.* should be to that extent increased, and which said agreement was on the 1st day of July, in the year of our Lord 1840, confirmed by the Tithe Commissioners for England and Wales under their hands and seal. And this deponent E. F. further saith, that by supplemental provisional articles of agreement for the commutation of the tithes of the said parish, made and executed at a meeting duly called and holden in the said parish on the 2nd day of July, in the year of our Lord 1840, and afterwards perfected according to the provisions of the said Act, by and between the several persons owners of land within the said parish, by whom, or by whose agents duly authorized in that behalf, the same agreement was executed, and the interest of which landowners in the lands of the said parish was not less than two-thirds of the land therein subject to tithes, of the one part, and the said G. H. and I. K. or their agents duly authorized, and whose interest in the tithes of the said parish was not less than two-thirds of the great tithes and two-thirds of the small tithes therein, of the other part; it was witnessed, and the parties thereto declared it to be their will and intention that the lands included in the said agreement of the 1st day of June, 1840, should be discharged from the payment of tithes, and that the said Rent-Charge should commence from the

1st day of October next preceding the confirmation of the Apportionment, and which said last mentioned agreement was on the 1st day of September, 1840, confirmed by the Tithe Commissioners for England and Wales, under their hands and seal. And this deponent E. F. further saith, that the said Tithe Commissioners for England and Wales, by their award under their hands and seal, bearing date the 1st day of September, in the year of our Lord 1840, by virtue of the power to that effect given to them by the Act for the Commutation of Tithes in England and Wales, did thereby assign the said parish to be a district within which the extraordinary Rent-Charge, in lieu of tithes upon hop-grounds and market-gardens, should be after the rate of 4*s.* for every imperial acre, to be paid according to the provisions of the said Act. And this deponent E. F. further saith, that by an Instrument of Apportionment of the total sum agreed to be paid by way of Rent-Charge in lieu of tithes amongst the several lands of the said parish confirmed by the said Tithe Commissioners for England and Wales, under their hands and seal, on the 30th day of September, in the year of our Lord 1841, the sum of 2*l.* 3*s.* 4*d.* per annum was apportioned as Rent-Charge payable to the vicar of the said parish, upon certain lands numbered 100 in the plan annexed to the said Apportionment, and which is in the said Apportionment described as the Home-field, and cultivated as hop-ground, and to contain in quantity in statute measure 6*a.* 2*r.* 2*p.* And this deponent E. F. further saith, that by an Indenture of lease bearing date the 31st day of December, in the year of our Lord 1841, and made between the said I. K. Vicar of the said parish, of the one part, and the said A. B. of the other part, for the considerations therein mentioned, the said I. K. granted and demised unto the said A. B., his executors, administrators,

and assigns, the said annual Rent-Charge of 500*l.* and the variations thereof, and subject to increase or decrease according to the provisions of the Acts for the Commutation of Tithes arising and payable from or out of the lands and tenements situated in the said parish which were liable to the same, and according to the tenor of the Apportionment thereof effected under the said Acts, to hold the same unto the said A. B., his executors, administrators, and assigns, from the 1st day of October then last past, for and during the term of seven years from thence next ensuing, and fully to be complete and ended if the said I. K. should so long live and continue vicar of the said parish. And this deponent E. F. further saith, that the said allotment, No. 100, in the plan annexed to the said Apportionment, has been for three years and upwards now last past, cultivated as hop-ground. And this deponent E. F. further saith, that he is the collector of the said Rent-Charge for the said A. B., and that after the granting of the said lease, and during the continuance thereof, two half-yearly payments, as well of the amount of the said ordinary Rent-Charge apportioned on the said lands and premises, numbered 100 in the plan annexed to the said Apportionment, as of the amount of the said extraordinary charge payable in respect thereof as cultivated as hop-ground, according to the prices of corn as provided by the said Acts, became due and payable, that is to say, on the 1st day of October, in the year of our Lord 1848, and the 1st day of April, in the year of our Lord 1849, respectively, and the same have been in arrear and unpaid for the space of forty days next after the said days of payment, when the same became due respectively, and still are in arrear and unpaid to the said A. B. And the said A. B. for himself saith, that the said arrears of Rent-Charge have not, nor hath any part thereof been paid to this deponent, but the

same are still in arrear and unpaid to this deponent. And the said C. D. for himself saith, (as in the last.)

418. *Another Form of Affidavit.*

In the Queen's Bench,

(or Common Pleas, or Exchequer of Pleas.)

A. B. of and C. D. of , severally make oath and say: and first this Deponent A. B. for himself saith, that by an award signed by Y. Z., Esquire, an Assistant Tithe Commissioner, according to the provisions of the Act for the Commutation of Tithes in England and Wales, bearing date the 1st day of June, in the year of our Lord 1840, and stating, among other things, that he had been duly appointed to ascertain and award the total sum to be paid by way of Rent-Charge, instead of the tithes of the parish of , in the county of . And that he found that the whole of the lands of the said parish were liable to all and all manner of Tithes, both great and small, and that the Rector of the said parish for the time being was entitled to all the said Tithes, and that he had estimated the clear annual value of the said Tithes in the manner directed by the said Act of Parliament, and had also taken into account the rates and assessments paid in respect of such Tithes during the seven years of average prescribed by the said Act. He the said Y. Z. did thereby award that the annual sum of £ , by way of Rent-Charge, and subject to the provisions of the said Act, should be paid to the Rector of the said parish for the time being, instead of all and all manner of Tithes, both great and small, and all moduses or prescriptive payments, in lieu of Tithes, arising from, or accruing due upon, or in respect of, all the lands of the said parish. And the said Y. Z. did thereby further award that the lands of the said parish should be discharged from Tithes,

and the said Rent-Charge should commence from the 1st day of October next preceding the confirmation of the Apportionment. And which said award was, on the 1st day of September, in the year of our Lord 1840, confirmed by the Tithe Commissioners for England and Wales, under their hands and seal. And this deponent A. B. further saith, that by an Instrument of Apportionment, &c. And this deponent A. B. further saith, that he this deponent A. B. was at the time of the commutation of the tithes of the said parish, and from thence hitherto has continued to be the Rector of the said parish. And this deponent A. B. further saith, &c.

419. *Form at the Suit of an Executor.*

In the Queen's Bench,

(or Common Pleas, or Exchequer of Pleas.)

W. X., of &c.—And this deponent, W. X., further saith, that the Rev. A. B. was at the time of the Commutation of the Tithes of the said parish, and from thence up to the day of his decease, hereinafter mentioned, continued to be the Rector of the said parish. And this deponent, W. X., further saith, that the said A. B. died on the day of , in the year of our Lord 1849. And this deponent, W. X., further saith, that letters testamentary of the said A. B. were granted by the Prerogative Court of the Archbishop of Canterbury, on the day of , in the year of our Lord 1849; whereby this deponent, W. X., is executor of the last will and testament of the said A. B., and hath the execution thereof. And this deponent, W. X., further saith, that after the lands of the said parish were discharged from the payment of Tithes, and after the commencement of the said Rent-Charge, as aforesaid, and in the lifetime of the said A. B., and whilst he continued Rector of the said parish, as aforesaid, two half-yearly payments of the

amount of the said Rent-Charge, apportioned on the said land and premises, numbered 100 in the plan annexed to the said Apportionment, according to the prices of corn, as provided by the said Act, became due and payable to the said A. B., as Rector of the said parish, that is to say, one half-yearly payment thereof, on the 1st day of October, in the year of our Lord 1848, and one other half-yearly payment thereof, on the 1st day of April, in the year of our Lord 1849, and the same were in arrear and unpaid for the space of forty days next after the said days of payment when the same became due respectively, and remained in arrear and unpaid to the said A. B., at the time of his death, and still are in arrear and unpaid to this deponent, W. X., as executor of the last will and testament of the said A. B., as aforesaid. And this deponent further saith, that after the lands of the said parish were discharged from the payment of Tithes, and after the commencement of the said Rent-Charge, as aforesaid, the proportion of the half-yearly Rent-Charge, apportioned on the said lands and premises, numbered 100 in the plan annexed to the said Apportionment, according to the time which elapsed from the commencement of the last period of payment thereof, in the lifetime of the said A. B., to the day of the death of the said A. B., including the day of the death of the said A. B., that is to say, from the 1st day of April, in the year of our Lord 1849, to the day of , in the year of Lord 1849, inclusive of such last-mentioned day, according to the prices of corn, as provided by the said Act, all just allowances and deductions in respect of such last-mentioned half-yearly Rent-Charge being made, became due and payable to this deponent, W. X., as executor of the last will and testament of the said A. B., as aforesaid, on the 1st day of October, in the year of our Lord 1849, when the entire portion of

half-yearly Rent-Charge, of which such portion of half-yearly Rent-Charge formed part, became due and payable, and the said proportion of such last-mentioned half-yearly Rent-Charge, hath been in arrear and unpaid for the space of forty days next after the said last half-yearly day of payment when the same became due, as aforesaid, and still is in arrear and unpaid to this deponent, as such executor, as aforesaid.

420. *Form at the Suit of an Administrator.*

W. X., &c.—— as in last form to "1849."——And this deponent, W. B., further saith, that letters of administration of the goods, chattels, and credits, which were of the said A. B., at the time of his death were granted to this deponent, W. X., by the Prerogative Court of the Archbishop of Canterbury, on the day of , in the year of our Lord 1849,——and then as above, describing the party "administrator" instead of "executor."

421. *Form at the Suit of a new Incumbent.*

And this deponent, A. B., further saith, that the Rev. T. U., the last Rector of the said parish died [or resigned the said rectory], on the day of , in the year of our Lord 1848, and that this deponent, A. B., was, on the death [or resignation] of the said T. U., duly instituted and inducted into the rectory of the said parish, and thereby became invested with the right to the said Rent-Charge, from the time of the death [or resignation] of the said T. U., as aforesaid, and this deponent, A. B., is still the Rector of the said parish. And this deponent, A. B., further saith, that after the death [or resignation] of the said T. U., and after this deponent, A. B., became rector of the said parish, as aforesaid, the proportion of the said Rent-Charge apportioned on the said land and pre-

mises, numbered 100 in the plan annexed to the said Apportionment, for the time which elapsed from the day of the death [or resignation] of the said T. U., of the current half-year in which the said T. U. died [or resigned] as aforesaid, according to the prices of corn, as provided by the said Act, became due and payable to this deponent, A. B., as rector of the said parish, on the 1st day of April, in the year of our Lord 1848. And also that after this day A. B. became rector, as aforesaid, two further half-yearly payments of the amount of the said Rent-Charge apportioned on the said land and premises, numbered 100 in the plan annexed to the said Apportionment according to the prices of corn, as provided by the said Act, became due and payable to this deponent, A. B., as rector of the said parish, that is to say, one half-yearly payment thereof, on the 1st day of October, in the year of our Lord 1848, and one other half-yearly payment thereof, on the 1st day of April, in the year of our Lord 1849, and that the said several amounts of Rent-Charge have been in arrear and unpaid for the space of forty days next after the said days of payment when the same became due respectively, and are still in arrear and unpaid to this deponent, A. B.

422. *Affidavit where access to the Premises cannot be obtained.*

And the said E. F. further saith, that he, this deponent, did, on the day of last, serve , the occupier of the said allotment, numbered 100, with a written notice under the hand of the said A. B., that after ten days from the service thereof, he intended to distrain upon the said lands for the arrears of Rent-Charge, to which the same were liable to him. And this deponent C. D., for himself, saith that, pursuant

to a warrant of distress under the hand of the said A. B., [or of the said E. F., as agent of the said A. B.,] he, this deponent, on the day of instant, attended at the said lands and premises for the purpose of distraining thereon for the said arrears of Rent-Charge, when he, this deponent, found the gate to the said premises locked and fastened; and this deponent thereupon called on the said , at his residence at and saw the wife of the said , and this deponent requested her to deliver to this deponent the key of the said gate, or to open the same for him, in order that he might distrain for the said arrears of Rent-Charge, and the wife of the said thereupon told this deponent that her husband was not at home, but that he had given her directions not to open the gate of the said allotment to any one. And this deponent thereupon served the said wife of the said , with a written notice, directed to the said ; that he, this deponent, would attend the following day, the day of instant, at ten o'clock in the forenoon, at the said allotment, for the purpose of making a distress for arrears of Rent-Charge due to the said A. B., and that, in case admittance thereto was not afforded, this deponent would be unable to make the distress, and proceedings would be taken to recover possession, as in the case of an insufficient distress. And this deponent C. D. further saith, that he, this defendant, did attend at the said allotment on the said day of instant, at ten o'clock in the forenoon, for the purpose of making the said distress, and waited there for the space of one hour, but the said did not attend, nor any one on his behalf; and the said gate was kept locked and fastened, and this deponent was unable to make the said distress. And this deponent C. D. further saith, that for the reason aforesaid,

no sufficient distress can be made on the said premises for the arrears of the said Rent-Charge.

423. *Form of Order.*

In the matter of the Rent-Charge of the parish of , in the County of . Allotment No. 100.

Upon reading the affidavit of A. B. and C. D., I do order that a writ do issue out of the Court of Queen's Bench, directed to the Sheriff of , requiring the said Sheriff to summon a jury to assess the arrears of Rent-Charge apportioned on land numbered 100 in the plan annexed to the Apportionment, pursuant to the stat. 6 & 7 *Wm. IV. c.* 71, *s.* 82.

Dated this day of , 1849.

Denman.

424. *Præcipe for the Writ.*

(County.) Writ for A. B. to assess the arrears of Rent-Charge on Allotment No. 100 in the Apportionment.

N. O.

1849.

425. *Form of Writ.*

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. TO the Sheriff of , greeting. WHEREAS, by Articles of Agreement for the Commutation of Tithes of the parish of , in the county of in pursuance of the Act for the Commutation of Tithes in England and Wales, made and executed at a meeting duly

called and holden in the said parish, on the 1st day of June, in the year of our Lord 1840, by and between the several bodies politic, and persons owners of land within the said parish, by whom or by whose agents duly authorized in that behalf the same Agreement was executed, and the interest of which landowners in the lands of the said parish was not less than two-thirds of the lands therein subject to Tithes, of the one part; and the Rev. A. B., rector of the said parish and owner of all the Tithes, as well great as small thereof, of the other part; It was agreed that the annual sum of 500*l.* by way of Rent-Charge, subject to the provisions of the said Act, should be paid to the said A. B., as Rector of the said parish and his successors, instead of all the tithes, as well great as small, of the lands of the said parish subject to Tithes (including Tithe of glebe) and instead of all moduses and compositions real and prescriptive and customary payments payable in respect of all the said lands or the produce thereof; a summary description of which lands was contained in the schedule annexed to the said Agreement; and it was thereby further agreed that the lands included in the said agreement should be discharged from the payment of Tithes (except as excepted in the said Act) from the 1st day of October next preceding the confirmation of the Apportionment of the Rent-Charge, therein before agreed on, and that the first payment of such Rent-Charge should be made or be recoverable on the expiration of six calendar months from the time from which the said lands were discharged from the payment of Tithes; and which said agreement was, on the 1st day of September, in the year of our Lord 1840, confirmed by the Tithe Commissioners for England and Wales, under their hands and seal. AND WHEREAS by an Instrument of Apportionment of the total sum agreed to be paid by way of Rent-Charge in lieu of Tithes, amongst the

several lands of the said parish, confirmed by the said Tithe Commissioners for England and Wales, under their hands and seal, on the 30th day of September, in the year of our Lord 1841, the sum of 2*l.* 3*s.* 4*d.* per annum was apportioned as Rent-Charge payable to the Rector of the said parish upon certain land numbered 100 in the plan annexed to the said Apportionment, and which is in the said Apportionment described as the Home-field, and cultivated as arable, and to contain in quantity in statute measure 6*a.* 2*r.* 2*p.* AND WHEREAS, after the lands of the said parish were discharged from the payment of Tithes as aforesaid, and after the commencement of the said Rent-Charge as aforesaid, two half-yearly payments of the amount of the said Rent-Charge apportioned on the said land and premises, numbered 100 in the plan annexed to the said Apportionment, according to the prices of corn, as provided by the said Act, became due and payable, that is to say, one half-yearly payment thereof on the 1st day of October, in the year of our Lord 1848, and one other half-yearly payment thereof on the 1st day of April, in the year of our Lord 1849, and the same have been in arrear and unpaid for the space of forty days next after the said days of payment when the same became due respectively, and still are in arrear and unpaid to the said A. B., as it is said, and there is no sufficient distress for the arrears of the said Rent-Charge on the said premises liable to the payment thereof: and whereas the Right Honourable Thomas Lord Denman, our Chief Justice of our Court before us, by his order dated the day of , upon reading the affidavits of A. B. and C. D., ordered that a Writ should issue as hereinafter contained. THEREFORE WE COMMAND you, that, pursuant to the statute in that case made and provided, and by the oath of twelve good and lawful men of your county,

qualified according to law, to be summoned by you for that purpose, you diligently assess the arrears of the amount of the said Rent-Charge apportioned on the said land and premises, numbered 100 in the plan annexed to the said Apportionment, remaining unpaid to the said A. B. according to the prices of corn, as provided by the said Act; and that you return the Inquisition thereupon taken to at Westminster, on the day of next, together with this Writ. WITNESS at Westminster, the day of , in the year of our reign.

For other forms of Writs the reader is referred to the several forms of Affidavits.

426. *Notice of executing Writ, if indorsed on the Writ.*

TO the Owner of the land numbered 100 in the Apportionment of the Rent-Charge, and whom else it may concern.

TAKE NOTICE that this Writ for the assessment of arrears of Rent-Charge will be executed before the Sheriff of at , in the parish of , in the county of , on the day of , at eleven of the clock in the forenoon, precisely. Dated this day of , 1849.

Yours, &c.

N. O.

(Add the Address.)

Attorney for the within named A. B.

427. *Form of Notice if given separately.*

In the Queen's Bench.

TO the Owner of the land numbered 100 in the Apportionment of the Rent-Charge, and whom else it may concern.

TAKE NOTICE that the Writ issued for the assessment of the arrears of Rent-Charge of the allotment above mentioned will be executed before the Sheriff of at , in the parish of , in the county of , on the day of , at eleven o'clock in the forenoon, precisely. Dated this day of , 1849.

Yours, &c.

N. O.

(Add the Address.)

Attorney for A. B., Owner of the Rent-Charge.

428. *Notice of Countermand.*

In the Queen's Bench.

TO the Owner of the land numbered 100 in the Apportionment of the Rent-Charge, and whom else it may concern.

TAKE NOTICE that I hereby countermand the Notice given you of executing the Writ for the assessment of the arrears of Rent-Charge of the allotment above mentioned. Dated this day of , 1849.

Yours, &c.

N. O.

(Add the address.)

Attorney for A. B., the Owner of the Rent-Charge.

429. *Form of Inquisition.*

(County) to wit. An Inquisition indented taken at

in the said County, the day of , in the year of our Lord 1849, before me, P. Q., Esq. Sheriff of the said County, by virtue of the Queen's Writ to me directed, and to this Inquisition annexed; on the oath of R. S., &c. good and lawful men of my bailiwick, who being sworn and charged to enquire of the matters in the said Writ mentioned, on their oath say that the sum of £ according to the prices of corn as therein mentioned, became due and payable, and remains in arrear and unpaid to A. B., named in the said Writ, for Rent-Charge apportioned on the land and premises numbered 100, as mentioned in the said Writ. In Witness whereof, as well I the said Sheriff, as the said jurors to this Inquisition, have set our seals the day, year, and place above written.

430. *Bill of Costs.*

In the Queen's Bench.

Re Rent-Charge.

Allotment No. 100.

	£.	s.	d.
Letter before proceedings	0	3	6
Instructions for Affidavit	0	6	8
Drawing same, folios 14	0	14	0
Engrossing	0	4	8
Attending the parties, reading over, and to be sworn, and paid two oaths	0	5	4
Attending before Judge for order	0	6	8
Paid for order, and filing affidavit	0	4	0
Instructions for writ to assess arrears	0	6	8
Drawing same, folios 12	0	12	0
Engrossing	0	6	0
Parchment	0	2	0
Paid signing and sealing, and fee	0	11	8

	£.	s.	d.
Paid filing order	0	1	0
Copy writ to serve	0	4	0
Service thereof at	0	5	0
Notice of executing writ, copy and service	0	5	0
Attending lodging writ	0	3	4
Paid Sheriff	0	4	0
Minutes of Evidence	0	13	4
Instructions to party to produce Gazette	0	3	4
Paid him	1	1	0
Instructions to produce Apportionment	0	3	4
Paid fee	1	1	0
Collector's attendance to prove arrears, and calculation of averages	0	10	6
Attending the execution of writ	1	1	0
Paid Sheriff	1	10	0
Attending for Inquisition	0	3	4
Paid signing Judgment	0	8	0
Attending	0	3	4
Drawing bill and copy	0	4	0
Attending taxing	0	6	8
Paid taxing	0	2	0
Letters, &c.	0	6	0
Writ of Habere facias possessionem	0	14	6
Attending for warrant	0	3	4
Paid for same			
Attending, instructing officer	0	3	4
Paid officer's fee and poundage			

431. *Form of Writ of Possession.*

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. TO the Sheriff of greeting. WE com-

mand you that you cause A. B. to have possession of the land and premises numbered 100 in the plan annexed to the Apportionment of the Rent-Charge of the parish of in the county of , confirmed by the Tithe Commissioners for England and Wales, and therein described as the Home-field, and cultivated as arable, and to contain in quantity in statute measure 6*a*. 2*r*. 2*p*. until the sum of £ , found to be due to the said A. B. by a certain inquisition taken pursuant to the statute for the Commutation of Tithes in England and Wales, and returned to our court before at Westminster at a certain day now past, according to the exigency of our Writ issued in that behalf, for arrears of the Rent-Charge by the said Apportionment apportioned on the said land and premises, according to the prices of corn, remaining unpaid, and also the sum of £ for the costs of the said A. B. of the said inquisition taxed by the proper officer of our said court before , and also the costs of this our Writ, and of executing the same, and of cultivating and keeping possession of the said lands, shall be fully satisfied, and in what manner you shall have executed this our Writ, make known to at Westminster, on the day of next, and have there then this Writ. WITNESS at Westminster, the day of , in the year of our reign.

432. *The Sheriff's Return.*

By virtue of this Writ to me directed, I did on the day of , 1849, cause possession of the within mentioned land and premises to be delivered to the within named A. B., as within I am commanded.

P. Q., Esq. Sheriff.

CHAPTER XI.

OF THE POSSESSION OF THE LAND, AND SUBSEQUENT PROCEEDINGS.

SECTION I.

Of the Possession of the Land under the Writ of Possession.

433. The Writ of Possession directs the owner of the Rent-Charge to have possession of the lands until the arrears of Rent-Charge, and costs of the proceedings, and of cultivating and keeping possession of the land be satisfied. (Nos. 106. 431.) And the owner of the Rent-Charge may be ordered to render an account of the rents and produce, and of the receipts and payments in respect of the same. (No. 107.)

434. From these clauses it may be inferred that the Rent-Charge owner in possession may do every thing that is necessary for cultivating and maintaining his possession of the land, but the statute does not in terms impose any duty on the owner of the Rent-Charge to cultivate the land.

435. There is a material distinction between a tenant by elegit, and a person in possession for non-payment of the Rent-Charge. A tenant by elegit takes the land at an annual value until the debt is satisfied, and as the annual value is ascertained by the inquisition, the time when the debt will be satis-

fied is certain; therefore he is not entitled to make any extraordinary profits beyond those which annually arise, as by cutting down trees, &c. The circumstance that a tenant by elegit is liable to account in equity, and even the court of law will refer it to the Master to take an account, does not alter his strictly legal rights. But the owner of the Rent-Charge holds the land until out of the rents and profits he is satisfied, and for which he is to account, and the profits being uncertain his claim may never be satisfied.

436. Yet as to tenant by elegit, it is stated, some say, that he against whom an execution by elegit is sued shall not have an action of waste against tenant by elegit, because he may have a writ of venire facias ad computandum, &c., and then the waste shall be recovered in the debt. (*Fitz. N. B.* 134, *H.*) But where a scire facias was issued against a tenant by elegit (who had cut trees to pay the residue of the money) to answer for the trees cut, and for the party to have his land again, the Court held that by the statute against cutting trees, this is in the nature of a trespass, and lies not in account, nor is he punishable by this writ of waste, but in an action on the case only. (21 *Ed. III.* 26 *F. N. B.* 134, *n.*) And it is said that on tenant by elegit accounting, if the money recovered by the plaintiff is levied out of the lands, the defendant shall recover his land, and if more be received by waste, &c. he shall have damages. —*Terms de Ley*, 288, *Jacob's Law Dic. tit. Elegit.*

437. A person in possession under the Tithe Act for non-payment of the Rent-Charge, is rather like a

mortgagee in possession, taking the whole profit, but liable to account. Therefore as a mortgagee in fee in possession cannot justify in equity the commission of any act which may injure the estate, and as although he may at law commit waste, yet he will be restrained in equity (*Powell on Mortgages*, 248); so probably the owner of the Rent-Charge might be restrained from committing waste or injuring the estate.

438. So where the mortgagee had cut down trees, on application to the Court, it was decreed that an account should be taken of what was cut down, and the produce applied towards the mortgage money and interest, and an injunction was granted to stay felling any more; but a distinction is made where the security is defective, for in that case the Court will not restrain a creditor from his legal privileges.—*Withrington* v. *Banks*, *Sel. Ca. Ch.* 31.

439. Under the Tithe Commutation Act, therefore, if lands are unproductive of valuable produce, as for instance, if they have been planted as preserves for game, from which no profit can be derived, it is conceived, that the owner of the Rent-Charge would be justified in cultivating them beneficially in order to satisfy the Rent-Charge.

440. A mortgagee in possession may not open mines or pits for gravel, peat, coal, &c. (*Co. Litt.* 53. *b.* 54. *b.*); but he may work old ones (*Clavering* v. *Clavering*, 2 *P. Wms.* 388). Nor may he change the course of husbandry (1 *Cru. Dig.* 133, *4th Ed. Co. Litt.* 53. *b.*), nor destroy heir-looms. (1 *Inst.* 53 *a.* 2 *Inst.* 304, *Powell by Coventry*, 249, *n.*) These restrictions may apply to the owner of the Rent-Charge.

441. A mortgagee in possession is not obliged to lay out money for the preservation of the estate, except to keep the estate in necessary repair (*Godfrey* v. *Watson*, 3 *Atk.* 518, *Powell*, 261); and a mortgagee will not be bound to keep up buildings in as good repair as he found them, if the length of time will account for their being dilapidated. (*Russell* v. *Smithers*, 1 *Anst.* 96, *Powell by Coventry*, 1038, *n.*) But he is answerable for gross negligence in respect of bad cultivation, and non-repair of the mortgaged premises. (*Wragg* v. *Denham*, 2 *Y. & C.* 117.) A mortgagee in possession may employ a skilful bailiff (*Powell* 1027), especially if the estate be at a distance from his residence.—*Godfrey* v. *Watson*, 3 *Atk.* 518, *Powell by Coventry*, 359, *n.*

442. The Tithe Act does not express any obligation on the owner of the Rent-Charge to keep the premises in repair, and it may be questionable whether he is bound at all to do so—he may be answerable for wilful waste. And it is conceived that the owner of the Rent-Charge may employ a bailiff, and charge the necessary expenses in his accounts.

443. A tenant by elegit derives his title, however, under the title of his debtor, against whom he has recovered judgment; and also a mortgagee's title is founded on that of the mortgagor; but the title of the owner of the Rent-Charge to the land of which he recovers possession is founded on his own title to the Rent-Charge, and is no way dependent on the title of the land-owner.

SECTION II.

Of Letting the Land.

444. But under the 5 & 6 *Vic. c.* 54, *s.* 12, the owner of the Rent-Charge may from time to time let the land for any period not exceeding one year in possession, at such rent as can be reasonably obtained for the same. (No. 111.) The statute does not require the agreement for letting to be in writing, or by deed.

445. The letting may be of the land, or part thereof. But a demise of it jointly with other land at an entire rent would be void.—*Doe d. Williams* v. *Matthews*, 2 *N.* & *M.* 264.

446. It may be made from time to time for any period not exceeding one year in possession. But if a man under a power to lease for twenty-one years makes a lease for twenty-two years, the excess is fatal to the whole. (*Hard.* 398. *Roe* v. *Prideaux*, 10 *East*, 158.) The Agreement may be made from henceforth, or from the date; but Conveyancers, *ex abundante cautelâ*, make the habendum in such cases from the day next before the day of the date of the Agreement. (*Sugden on Powers.*) The letting may be for a term certain, not exceeding the period limited by the Act, with a proviso determining it on a given event.—*Ib.*

447. And notwithstanding an agreement for a tenancy, the owner of the Rent-Charge and the tenant may at any time during the tenancy deter-

mine the same, and agree on a new term. (*Ib.*) But the statute of frauds (29 *Car. II. c.* 3, *s.* 3) requires the surrender to be by deed, or note in writing, signed by the party or their agents, or by operation of law.

448. If the tenant continue to hold the land longer than the period fixed, the agreement should be from time to time renewed, the tenant not being what is usually denominated a yearly tenant.

449. The rent is to be such as can be reasonably obtained for the same. Whether the rent reserved be such would be a point to be decided by a jury. (*Sugden on Powers.*) It is not sufficient to impeach a bonâ fide letting, at a rent which the jury find a fair rent, that there were offers of higher rents from other persons, against whose responsibility nothing appears. When the transaction is fair, and no injurious partiality is manifestly shown in favour of the particular lessee, there ought to be something extravagantly wrong in the bargain to set it aside on the ground of higher offers; for in the choice of a tenant there are many things to be regarded besides the mere amount of the rent offered. (*Doe* v. *Ratcliffe,* 10 *East,* 278.) Lord Eldon, in one case said, "There is but one criterion which our courts always attend to as a leading criterion in discussing the question whether the best rent has been got or not, that is, whether the man who makes the lease has got as much for others as he has for himself; for if he has got more for himself than for others, that is a decisive evidence against him. The court must see that there is reasonable care and diligence exerted to get

such rent as, care and diligence being exerted, circumstances mark out as the rent likely to be obtained." —*Sugden on Powers.*

SECTION III.

Of Account and Restitution.

450. The owner of the Rent-Charge should be careful in keeping an account of his receipts and payments on account of the allotment, and to possess vouchers for all his disbursements, as the land-owner may, from time to time, call for an account, which the court or a judge may order; and on satisfaction of the arrears and costs, a Writ of Supersedeas may be ordered to the Writ of Possession. (No. 107.)

451. The restitution of land on payment or satisfaction of the Rent-Charge, costs, and expenses, is made subject and without prejudice to any letting pursuant to the late Act. (No. 111.)

452. An application *in re Camberwell, Allotment* 1008, was made at chambers for an account, and on payment of the balance due, for possession to be re-delivered; but the account being delivered on the hearing of the summons, the late Mr. Justice Williams would order only that the same should be referred to the master, to ascertain the balance, observing that, on the balance being ascertained and paid, the party might apply again as to the re-delivery of possession, the statute requiring the satisfaction of the Rent-Charge and costs to precede the Order for a Supersedeas. But orders have been made by consent for

an account, and the referring of it to the master, and on payment of the balance for re-delivering possession on one application, where there has been no objection to that course.

453. A mortgagee in possession will be entitled to such expenses as he shall incur in necessary repairs or other acts for the preservation of the estate mortgaged, and may add them to his debt.—(*Powell*, 249.) But if extraordinary expenditure is necessary for the preservation of the property, he should previously apprize the mortgagor. (*Trimleston* v. *Hamill*, 1 *Ball & Bea*, 377; *Powell by Coventry*, 1037 *n.*) And he will be made to account for loss occasioned by his gross negligence in respect of bad cultivation and non-repair of the mortgaged premises.—*Wragg* v. *Denham*, 2 *Y. & C.* 117.

454. A mortgagee in possession will not be obliged to account according to the value of the lands, viz. he will not be bound by any proof that the land was worth so much, unless it can likewise be proved that he actually made that sum by it, or might have done had he not been guilty of fraud or wilful default, or if he turned out a sufficient tenant that held it at so much rent, or refused to accept a sufficient tenant who would have given so much for it; for it is the laches of the mortgagor, that he let the lands lapse into the hands of the mortgagee by the non-payment of the money, and when it doth he is only a bailiff for what he doth actually receive, but is not bound to the trouble and pains of making the most of what is another's.—*Powell*, 949; *Hughes* v. *Williams*, 12 *Ves.* 493.

455. Where mortgagees in possession manage the estate themselves, there is no allowance to be made for their care and pains, but if they employ a skilful bailiff, they will be allowed such sums as they have paid him, for a man is not bound to be his own bailiff. (*Powell*, 1027.)

456. It is a general rule, founded on the jealousy which Courts entertain at the interference of the mortgagee with the estate, that if he be in possession, and receive the rents, he shall be allowed nothing for his trouble. (*Bonithon* v. *Hockmore*, 1 *Vern*, 316. *French* v. *Baron*, 2 *Atk.* 120.) But if the estate be at such a distance from the place of his residence, as that he must necessarily have employed a bailiff, if the property had been his own, he will be allowed such sums as he actually paid to a bailiff.—Per Lord Chancellor in *Godfrey* v. *Watson*, 3 *Atk.* 518. *Powell by Coventry*, 359 *n.*

SECTION IV.

Of Irregularity in the Proceedings.

457. It was the intention of the Tithe Commutation Act, that after the Commutation of the Tithes in any parish or district, the validity of the proceedings should never be questioned, *s.* 66. 95, and 10 & 11 *Vic. c.* 104, *s.* 2; and, therefore, to enforce payment, the owner of the Rent-Charge should possess the summary remedy of distress, if any sufficient distress could be found; and, if not, then that he should, by a summary process, recover possession of the land, until payment of the arrears and costs. Under this latter proceeding, if there is no sufficient

distress, the only question to be inquired into is the amount of arrears.

458. In the course of the latter proceeding, however, some irregularities may occur, as that there was a sufficient distress,—or the writ to assess the arrears may not be supported by the affidavit,—or the case stated thereon may not disclose sufficient facts,—the copy of the writ served may not correspond with the original,—or the service may not have been made according to the statute,—or due notice may not have been given of the executing of the writ,—or there may be some error in the execution of it, or in the inquisition,—or in the writ of possession. In any of these cases, application may be made to set aside the irregular proceeding.

459. To set aside proceedings for irregularity, it is the practice of the Courts that parties should apply without delay, and that rule was considered by the Court of Queen's Bench as applicable to proceedings under the Tithe Commutation Act in *re Camberwell, Allotment* 606, *Hilary Term*, 1843. The Courts, however, draw a distinction between irregularities and process absolutely void.

460. There seems to have been some question whether the Court has any jurisdiction to set aside the proceedings under the Tithe Commutation Act. On an application to the Court of Queen's Bench, in the case of *Camberwell, Allotment* 232, *Easter Term*, 1841, to set aside the proceedings on account of there being a sufficient distress, the Court intimated that they had not jurisdiction, and referred the counsel to the judge who made the order; and

in the other case before stated, No. 606, the late Attorney-General Sir Frederick Pollock said, that in a case in the Court of Exchequer a few days previous, the Court held that they had not jurisdiction, and he took the objection in the case of Allotment 606; but in the latter case the rule was discharged on the merits, without the point being decided. In *Camberwell Rent-Charge*, No. 585, on an application to Mr. Justice Williams at chambers, in July 1841, to set aside the proceedings for irregularity, that learned judge thought he had no power to interfere, the order for the writ not having been made by him. In the case of the *Hamersmith Rent-Charge, Hilary Term*, 1849, Mr. Baron Platt referred an application to set aside the proceedings, on the ground that there was sufficient distress, to the Court; and the Court of Exchequer afterwards entertained the application, but has not yet given a decision on the merits. In this case the order for the writ had been made by Mr. Baron Platt.

461. The distinction should probably be this: where the objection is to the sufficiency or the truth of the affidavit, or to the order of the judge, the application should be to the judge who made the order, the statute vesting the power of making the order in a single judge; but if the objection is to the writ, or subsequent proceedings, there is no reason why the application should not, in the usual way, be made to the Court, if in term time; or if in vacation, to any of the judges at chambers. But *per* Mr. Justice Williams and Mr. Justice Wightman, if the party had an opportunity of applying to the

Court, but failed to do so, a judge ought not, in a case of this kind, to be called on to interfere at chambers.—*Re Camberwell Rent-Charge, Allotments* 1008 and 606.

462. Where the owner of the Rent-Charge is in possession for non-payment of the Rent-Charge, and an application is made to set aside the proceedings, it is obvious that it will be very important, if the court or judge is about to grant the application, to request that the party be required to undertake not to bring an action. And if the application be made by the land-owner, he should be required to undertake on behalf of his tenant as well as himself.

CHAPTER XII.

OF PAYMENT OF THE RENT-CHARGE AFTER THE MAKING OF THE AWARD OR AGREEMENT, AND BEFORE THE CONFIRMATION OF THE APPORTIONMENT.

463. UNDER the Acts of the 6 & 7 *William IV. c.* 71, *s.* 67, and 7 *W. IV.* & 1 *Vic. c.* 69, *s.* 11, and 2 & 3 *Vic. c.* 62, *s.* 10, the lands of a parish were to be discharged from Tithes, and the Rent-Charge commence (except in certain cases) on the 1st January, 1st April, 1st July, or 1st October, next preceding or following the confirmation of the Apportionment. But much delay was often occasioned in settling and adjusting the Apportionment before the same could

be confirmed by the Commissioners, and the Tithes continued to be taken in kind.

464. The statute 3 & 4 *Vic. c.* 15, therefore provides, that in every case where an annual sum by way of Rent-Charge shall have been fixed in any parish, either by award or agreement, it shall be lawful for the Commissioners at any period after the confirmation of the award or agreement, and before the confirmation of the Apportionment, upon the application in writing of any land-owner or occupier, and upon security being given for the payment of the Rent-Charge, to declare that the lands of such parish shall be discharged from Tithes, and that the Rent-Charge shall commence from the day of discharge named in the declaration.—See *sec.* 1, 2, 3.

465. And the statute contains provisions for any land-owner or tenant paying his estimated proportion. —*Sec.* 4, 5, 6.

466. The security, if in arrear for twenty-one days from any half-yearly day of payment, may be enforced by a summary application before a judge of any of the superior courts of law.—*Sec.* 7.

467. And the person paying such security shall, after the confirmation of the Apportionment, have the like remedies for the recovery thereof against the lands of the parish, in the proportions fixed by the Apportionment, as are given by the Tithe Acts to the owners of Rent-Charge.—*Sec.* 8.

468. And if the security prove insufficient, the person entitled to the benefit thereof may, after twenty-one days from the confirmation of the Appor-

tionment, recover the amount against the lands of the parish.—*Sec.* 9.

469. The security, and every assignment thereof, is made free of stamp duty.—*Sec.* 10.

CHAPTER XIII.

OF THE RENT-CHARGE, IN RESPECT OF THE INCUMBRANCES AND INCIDENTS TO WHICH IT IS SUBJECT; AND THE ESTATE THEREIN; AND THE MERGER THEREOF IN THE ESTATE IN THE LANDS.

470. THE Rent-Charge is subject to all parliamentary, parochial, county, and other rates, charges, and assessments, in like manner as the Tithes commuted for such Rent-Charge were subject.—6 & 7 *William IV. c.* 71, *s.* 69. No. 53.

471. The Rent-Charge is subject to the Property Tax, not by way of assessment, but by way of deduction from the Rent-Charge.—5 & 6 *Vic. c.* 35. No. IV. Rules Ninth, Tenth. (No. 58.)

472. By the original Tithe Commutation Act, 6 & 7 *William IV. c.* 71, *s.* 71, any person having any interest in or claim to Tithes, or to any charge or incumbrance upon Tithes, shall have the same right to, or claim upon, the Rent-Charge, and shall be entitled to have the like remedies for recovering the

same, as if his right or claim had accrued after the commutation, provided that nothing therein contained shall give validity to any mortgage or incumbrance, which before the passing of the Act was invalid or could not be enforced.

473. And every estate for life, or other greater estate in any such Rent-Charge, shall be taken to be an estate of freehold.—*Ib.*

474. And every estate in any such Rent-Charge shall be subject to the same liabilities and incidents as the like estate in the Tithes commuted for such Rent-Charge.—*Ib.*

475. And where any lands were exempted from Tithe whilst in the occupation of the owner thereof, by reason of being glebe, or of having been heretofore parcel of the possessions of any privileged order, the same lands shall be in like manner exempted from the payment of the Rent-Charge apportioned on them whilst in the occupation of the owner thereof.—*Ib.*

476. The same provision extends to Crown lands of the tenure of ancient demesne, or otherwise exempt from the payment of Tithes whilst in the tenure or manurance of Her Majesty, her tenants, farmers, or lessees, or their under-tenants.—2 & 3 *Vic. c.* 62, *s.* 12.

477. And where by virtue of any Act of parliament any Tithes are authorized to be sold, exchanged, appropriated, or applied in any way, the Rent-Charge may be saleable or exchangeable, appropriated and applied in like manner.—6 & 7 *W. IV. c.* 71, *s.* 71.

478. And no such Rent-Charge shall merge or be

extinguished in any estate of which the person entitled thereto may be seized or possessed in the lands on which the same shall be charged. But it shall be lawful for any person seized in possession of any estate in fee simple, or fee tail, of any Tithes or Rent-Charge, to merge the same in the freehold and inheritance of the lands by the means mentioned in the Act.—*Ib.*

479. This power is, by the 1 & 2 *Vic. c.* 64, extended to any person who has the power of acquiring or disposing of the fee simple in possession of any Tithes or Rent-Charge.—*Sec.* 1. And where the Tithes or Rent-Charge, and the lands out of which the same are payable, are settled to the same uses, the tenant for life in possession may exercise the like power.—*Sec.* 3. These provisions extend to all lands being copyhold of inheritance, or copyhold for lives, or of any other tenure whatsoever.—*Sec.* 4.

480. The deed or declaration of merger is not chargeable with any stamp duty.—7 *W. IV.* & 1 *Vic. c.* 69, *s.* 12.

481. The lands in case of such merger shall be subject to any charge, incumbrance, or liability which existed on the Tithes or Rent-Charge, and which shall have priority over any charge or incumbrance then existing on the lands.—2 & 3 *Vic. c.* 62, *s.* 1.

482. Such charge, incumbrance, or liability, may be specially apportioned upon the lands, or part thereof, or any other lands held under the same title, and for the same estate in the parish, being of three times the value of the charge.—*Sec.* 2.

483. And where Tithes or Rent-Charge shall be subject to any such charge, incumbrance, or liability,

although the person has not the power or does not intend to merge, the same may be specially apportioned upon part of the Tithes or Rent-Charge being of three times the value of the Charge.—*Sec.* 4.

484. The expense of such special Apportionments to be borne by the party at whose instance they shall be made.—*Sec.* 5.

485. The provisions for merger extend to glebe or other land where the same, and the Tithes or Rent-Charge thereof, belong to the same person in virtue of his benefice, or of any dignity, office, or appointment held by him.—2 & 3 *Vic. c.* 62, *s.* 6. 5 & 6 *Vic. c.* 54, *s.* 20.

486. But in case of lands subject to arbitrary fine, the annual value of the Tithes or Rent-Charge may be certified by the Commissioners on the declaration of merger, and future assessments of fine shall be made as if the lands were subject to such Tithes or Rent-Charge.—2 & 3 *Vic. c.* 62, *s.* 7. 5 & 6 *Vic. c.* 54, *s.* 20.

487. By the 9 & 10 *Vic. c.* 73, *s.* 18, Tithes, or Rent-Charge in lieu thereof, may be merged after the agreement or award for the commutation of Tithes, but before the apportionment.

488. And the powers relating to the merger of Tithes or Rent-Charge may be executed by a person entitled in equity to such Tithes or Rent-Charge, *s.* 19.

489. Every Instrument purporting to merge any Tithes or Rent-Charge, and made with the consent of the Commissioners before the passing of that Act, is thereby absolutely confirmed.—*Ib.*

CHAPTER XIV.

OF DEFINING GLEBE-LANDS AND GIVING LAND IN LIEU OF RENT-CHARGE; FIXING THE COMMENCEMENT OF THE RENT-CHARGE AFTER THE APPORTIONMENT; A NEW APPORTIONMENT IN CASE OF SMALL HOLDINGS; THE RE-APPORTIONMENT OF THE RENT-CHARGE CHARGED ON AN ALLOTMENT; THE REDEMPTION OF THE RENT-CHARGE IN CERTAIN CASES; THE ALTERATION OF THE APPORTIONMENT AFTER INCLOSURE OF LANDS; A SUPPLEMENTAL APPORTIONMENT IN RESPECT OF THE OWNERS OF THE RENT-CHARGE; THE REMOVAL OF COPY OF INSTRUMENT OF APPORTIONMENT; AND THE CORRECTION OF THE APPORTIONMENT WHERE LANDS IMPROPERLY CHARGED WITH RENT-CHARGE.

SECTION I.

Of defining Glebe-lands, and giving land in lieu of Rent-Charge.

490. AFTER the Apportionment of the Rent-Charge and notwithstanding its confirmation, certain acts may be done, altering its original position, or otherwise affecting it. Thus in cases where the quantity of glebe-land is known but cannot be identified, the

Commissioners are empowered, as well after the Commutation as before, on the application of the spiritual person to whom the same belongs in right of the benefice, and with the consent of the land-owners claiming title to the land, and being in possession thereof, to define and settle the glebe-lands of such benefice; and also on the like application of any spiritual person to exchange glebe-lands for other land, with the consent of the ordinary and patron of the benefice and of the land-owners of the land to be given in exchange for the glebe-lands, and being in actual possession thereof.—5 & 6 *Vic. c.* 64, *s.* 5.

491. And such exchange may be effected although at the time of such exchange or of the application in relation thereto, no proceedings for or concerning the commutation of Tithes in the parish in which such glebe-lands may be situate, shall have been pending, and whether the commutation of Tithes in such parish shall or shall not have been completed. 9 & 10 *Vic. c.* 73, *s.* 22.

492. The power of giving twenty acres of land instead of Tithes (6 & 7 *W. IV. c.* 71, *s.* 29, 62,) having been inoperative in a great degree by reason that the land-owners by giving land instead of vicarial Tithe, could not free their lands from the liability to rectorial Tithe, and the converse; the 5 & 6 *Vic. c.* 54, *s.* 6, enables any Tithe-owner, with the consent of the patron and ordinary in the case of spiritual tithes, to agree for the assignment to any other owner of Tithes issuing out of the same lands, of so much of his Tithes arising within the same parish, or of the

Rent-Charge to be paid instead thereof, as shall be an equivalent for the Tithes belong to such other Tithe-owner issuing out of the same lands, or for the Rent-Charge to be paid instead thereof, for the purpose of enabling any land-owner who shall be desirous of giving land instead of Tithes to free his lands from both rectorial and vicarial Tithes and Rent-Charge in respect thereof, such agreement to be carried into effect by an award of the Commissioners, to be made either before or after the confirmation of the Apportionment.

493. So much of the first Act as enables any land-owner, either by parochial agreement or individually, to give land instead of Tithes or Rent-Charge at any time before the confirmation of the Apportionment, (6 & 7 *W. IV. c.* 71, *s.* 29, 62,) is extended, and the powers for that purpose may be exercised at any time as well after as before the confirmation of the Apportionment, during the continuance of the Tithe Commission.— 2 & 3 *Vic. c.* 62, *s.* 19, 20, 21.

SECTION II.

Of fixing the Commencement of the Rent-Charge after the Apportionment.

494. By the 5 & 6 *Vic. c.* 54, *s.* 3, in all cases where no time is fixed by any award or agreement, commuting the Tithes of a parish for the commencement of the Rent-Charge, it shall be lawful, notwithstanding that the Apportionment may have been confirmed, for the land-owners and tithe-owners to enter into a supplemental agreement, for fixing the

period at which the Rent-Charge shall commence; such supplemental agreement to be confirmed by the Commissioners, and copies deposited in like manner as Instruments of Apportionment.

495. This clause only applies to cases where no time was fixed by the agreement or award; whereby the land would be discharged from Tithes, and the Rent-Charge commence from the 1st January next after the confirmation of the Apportionment (6 & 7 *W. IV. c.* 71, *c.* 67). In such cases the parties may enter into an agreement as above provided, after the Apportionment has been confirmed.

SECTION III.

Of a new Apportionment in case of small holdings.

496. It having happened that in cases where during the seven years of average, Tithes had not been demanded of certain tenements by reason of their small extent, or the small amount of such Tithes, such tenements had notwithstanding been included in the Apportionment, it is provided by the 3 *Vic. c.* 15, *s.* 26, that in any such case in which the Apportionment shall have included any number of small tenements exceeding in the whole one hundred, from which tenements no Tithe or composition for Tithe had been demanded or taken (notwithstanding their liability thereto) during the period of seven years next preceding Christmas, 1835, it shall be lawful for the Commissioners, upon the application in writing of any ten or more of the owners or occupiers of such

small tenements, or of the Tithe-owner, and after satisfactory proof that no part of the Rent-Charge had been agreed to be given or awarded in respect of the Tithes of such small tenements, to cause a new Apportionment to be made of the said Rent-Charge, and to order and direct that no part thereof shall be apportioned upon such small tenements.

497. The provisions in the first Act as to Apportionments, are to apply to such new Apportionments; and such new Apportionment shall take effect from the half-yearly day of payment of the Rent-Charge next before its confirmation; but without affecting the previously due Rent-Charge.

498 And by *sec.* 27, the costs of such new Apportionment shall be borne by the party making the application, which in the case of an ecclesiastical Tithe-owner may be charged on the Rent-Charge.

499. Under these clauses the Rent-Charge of the parishes of Clapham and Camberwell, in Surrey, have been newly apportioned, omitting the small tenements, and adding the amount to the Rent-Charge on the larger allotments.

SECTION IV.

Of the Re-apportionment of the Rent-Charge, charged on an allotment.

500. It is enacted, that if at any time, subsequent to the confirmation of any such Instrument of Apportionment, the owner of any lands charged with any such Rent-Charge shall be desirous that the Appor-

tionment thereof shall be altered, it shall be lawful for the Commissioners of Land-tax for the county or place where the said lands are situate, or any three of them, to alter the Apportionment in such manner and in such proportion, and to the exclusion of such of the lands as the land-owner, with the consent of two justices of the peace acting for the county, riding, division, or other jurisdiction in which the lands are situated, may direct; and such altered Apportionment shall be made by an instrument in writing, under the hands and seals of the said Commissioners of Land-tax and of the said land-owner and justices, of the like form and tenor as to the said lands as the original Apportionment, and bearing date the day of its execution by the said Commissioners of Land-tax, subject to the provision hereinbefore contained with respect to the value of lands on which any Rent-Charge may be charged on account of the Tithes of any other lands; and every such altered Apportionment shall be as valid as if made and confirmed by the Tithe Commissioners as aforesaid, and shall be taken to be an amendment of the original Apportionment; and in every such case two counterparts of the Instrument of altered Apportionment under the hands and seals of the said Commissioners of Land-tax, and justices, and land-owner, shall be sent, one to the registrar of the diocese, and one to the incumbent and church or chapel-wardens, or other person having the custody of the other copy of the original Instrument of Apportionment, and one counterpart shall be annexed to the copy of the Instrument of Apportionment; in the

custody of the registrar and such other person respectively, and taken to be an amendment thereof; and thenceforward such lands shall be charged only according to such altered Apportionment; and all expenses of such alteration shall be borne by the land-owner desiring the same.—6 & 7 *Wm. IV. c.* 71, *s.* 72.

501. And by the 5 & 6 *Vic. c.* 54, stating that by the first recited Act, power is given for altering Apportionments of Rent-Charge by the Commissioners of Land-tax on the application of the owner of the lands charged therewith, and it is expedient that the power thereby given should be extended, and also that during the continuance of the Tithe Commission the like power should be vested in the Tithe Commissioners; it is enacted, that if at any time after the confirmation of any Instrument of Apportionment it shall appear that the lands charged with one entire Rent-Charge belong to, or have become vested in several owners, and that any of the owners of such lands shall be desirous that the Apportionment thereof should be altered, it shall be lawful for the Commissioners of Land-tax for the county or place where the said lands are situated, or any three of them, to appoint, by notice under their hands, a time and place for hearing the parties to such application, and all other parties interested therein; and upon satisfactory proof of such notice having been served on all parties interested, full twenty-one days before the day of hearing, to proceed to alter the Apportionment in such manner and in such proportion amongst the said lands as to them shall seem just,

subject nevertheless to the consent of two justices of the peace, as in the said first recited Act provided; and further, that upon such application being made to the said Tithe Commissioners, they shall have the same power of making such alterations as by the said first recited Act and by this Act is vested in the Commissioners of Land-tax, and that without any such consent of two justices of the peace.—*Sec.* 14.

502. Provided that no alteration of any Apportionment shall be made under the first recited Act or this Act, whereby any Rent-Charge shall be subdivided, so that any subdivision thereof shall be less than five shillings.—*Sec.* 14.

503. And stating that it is expedient to make further provision for recording all such alterations of Apportionment, it is enacted, that the registrar of the diocese, as soon as conveniently may be after the passing of this Act, shall cause to be made and sent to the office of the Tithe Commissioners a copy, certified under his hand, of every Instrument of altered Apportionment in his custody, which was made before the passing of this Act, the reasonable cost of making and sending which copy shall be defrayed by the Tithe Commissioners as part of the expense of putting in execution the Acts for the Commutation of Tithes; and after the passing of this Act three counterparts shall be made of every Instrument of altered Apportionment at the expense of the landowner desiring the alteration, and two of the said counterparts shall be sent as provided by the first recited Act, and the third shall be sent to, or de-

posited in the office of the Tithe Commissioners; or after the expiration of the Tithe Commission, shall be sent to, and kept by the person having custody of the records and papers of the said Commission, and shall be annexed to the Instrument of Apportionment in the custody of the said Commissioners, or the person having the custody of their records and papers.—*Sec.* 15.

504. Under the first Act it was considered that a re-apportionment could not be made except upon the application of all the land-owners of the allotment; this last Act enables any one of the land-owners to make the application.

505. And by the original Act the re-apportionment was made without any notice to the owner of the Rent-Charge; under the last Act he is to have notice of the proceedings.

506. The power of making the re-apportionment is by the last Act conferred on the Tithe Commissioners as well as the Land-tax Commissioners.

507. And the last Act restricts the subdivision of allotments to sums of not less than five shillings.

SECTION V.

Of the Redemption of the Rent-Charge in certain cases.

508. The Rent-Charge may not only be redeemed by giving 20 acres of land, as before stated, (Nos. 20, 492,) but also by money payments in the three cases following:—Before the confirmation of the Appor-

tionment, when the total Rent-Charge does not exceed 15*l.*; and after the confirmation of the Apportionment when the Rent-Charge is apportioned on land not within the parish, and also separate Rent-Charges not exceeding 20*s.* in amount.

509. Thus by the 9 & 10 *Vic. c.* 73, it is enacted, That where under any agreement or award which had been or thereafter should be confirmed by the Commissioners, the amount of the Rent-Charge agreed or awarded to be paid instead of the Tithes of any parish should not exceed the sum of 15*l.*, and should not have been apportioned, or the Apportionment of such Rent-Charge should not have been confirmed by the Commissioners, it shall be lawful for the owners of the land chargeable therewith, or any of them, with the consent of the person or persons for the time being entitled to the receipt thereof, or, in the case of an infant, feme covert, or lunatic, with the consent of the guardian, husband, or committee of the estate of the person so under disability to redeem such Rent-Charge on payment in manner thereinafter mentioned (within such time as the Commissioners shall in each case limit in that behalf) of a sum of money not less than twenty-four times the amount of such Rent-Charge.—*Sec.* 1.

510. And in every case in which any such Rent-Charge, not exceeding 15*l.* as aforesaid, had been or should be awarded to be paid, the Commissioners shall give notice in such manner as they shall think fit of the time within which it shall be lawful for the owners of the land charged therewith, or any of them, to redeem such Rent-Charge, and when it shall

appear to the Commissioners that the consideration money for the redemption of such Rent-Charge as aforesaid shall have been paid, according to the provisions of that Act, within the time limited by them in that behalf, or within any enlarged time which the Commissioners may by any order under their hands and seal allow for that purpose, no Apportionment of the Rent-Charge shall be made, but the Commissioners shall by a certificate under their hands and seal certify that such Rent-Charge has been redeemed, and that the parish is discharged of such Rent-Charge, and of the Tithes in lieu of which such Rent-Charge was agreed or awarded to be paid, as from such time as the Commissioners shall think reasonable and declare, and such parish shall be thenceforth discharged according to the terms of such certificate.—*Sec.* 2.

511. And in every case in which, by any Instrument of Apportionment confirmed under the provisions of the said Acts any Rent-Charge or portion of Rent-Charge had been or should have been (by reason of error as to boundary or otherwise) charged on lands not within the parish in respect of the Tithes of which the aggregate Rent-Charge the Apportionment of which should have been so confirmed was agreed or awarded to be paid, such Rent-Charge or portion of Rent-Charge so charged on lands not within the parish shall be redeemable on payment by the owners of the lands charged with the residue of such aggregate Rent-Charge, or any of them, of a sum of money equal to twenty-four times the amount of the Rent-Charge or portion of

Rent-Charge thereby made redeemable, and it shall be lawful for the Commissioners before they shall proceed to direct a new Apportionment to give notice that the Rent-Charge or portion of Rent-Charge so erroneously apportioned on lands not within the parish may be redeemed, under the provisions of that Act, within a time in such notice to be limited in that behalf.—*Sec.* 3.

512. When it shall appear to the Commissioners that the consideration money for the redemption of the Rent-Charge or portion of Rent-Charge so charged by such Instrument of Apportionment on lands not within the parish shall have been paid, according to the provisions of that Act, within the time which shall have been limited by the Commissioners in that behalf, or within any enlarged time which the Commissioners may by order under their hands and seal allow for that purpose, and that the arrears thereof (if any) have been paid, the Commissioners shall under their hands and seal certify that such Rent-Charge or portion of Rent-Charge has been redeemed, and thenceforth, except as respects the lands so erroneously charged, and the Rent-Charge or portion of Rent-Charge apportioned thereon, the Apportionment and charges made by such Instrument of Apportionment shall be valid and effectual in such and the same manner as if the aggregate Rent-Charge had originally consisted only of the sum of the portions charged on the lands within the parish, and had been apportioned on such lands, and no others, in the portions in the Instrument of Apportionment expressed.—*Sec.* 4.

513. And in every case in which, under any confirmed Instrument of Apportionment or any altered Apportionment under the powers of the said Acts, the whole amount of the Rent-Charge or separate portion of Rent-Charge with which the lands of any owner shall be charged in respect either of all Tithes or of any kind of Tithes payable to separate Tithe-owners shall be a sum not exceeding twenty shillings, it shall be lawful for such owner at his option, and with the consent of the person or persons for the time being entitled to the receipt thereof, or in the case of an infant, feme covert, or lunatic, with the consent of the guardian, husband, or committee of the estate of the person so under disability, at any time to redeem such Rent-Charge or separate portion of Rent-Charge on payment, according to the provisions of the Act, of such a sum of money as shall be not less than twenty-four times the amount of the Rent-Charge or portion of Rent-Charge; and after payment of such consideration money according to the provisions of the Act the Commissioners shall certify that such Rent-Charge or portion of Rent-Charge has been redeemed, and the same from and after the payment of the half-yearly portion of such Rent-Charge, or portion of Rent-Charge which shall next accrue due subsequently to the time of payment of such consideration money, shall cease and be extinguished: Provided always, that no such redemption as last aforesaid shall extinguish or affect any extraordinary Rent-Charge which would become payable in respect of such land upon any change of the cultivation thereof.—*Sec.* 5.

514. In every case in which a Rent-Charge is redeemable under the provisions of the Act, the Commissioners shall, upon the request of the owners of land chargeable with such Rent-Charge or any of them, certify under the hands and seal of the Commissioners the sum of money in consideration of which such Rent-Charge may be redeemed; and when it shall appear to the Commissioners that payment or tender of such consideration money has been duly made, it shall be lawful for the Commissioners to certify that such Rent-Charge has been redeemed under the provisions of that Act, and such certificate shall be final and conclusive: provided that if any consideration money shall be paid for the redemption of a Rent-Charge to a person not entitled under the provisions of the Act to receive the same, the land which was charged with such Rent-Charge before the redemption thereof, shall be charged in equity with the payment of such consideration money to the person rightfully entitled thereto, as if the same were purchase money for such land remaining unpaid; but the same remedies may be had against the person who shall have wrongfully received such money as purchasers are entitled to by the rules of law and equity.—*Sec.* 6.

515. And where the person entitled to a Rent-Charge redeemable under the provisions of the Act shall be absolutely entitled thereto in fee simple in possession, or shall be enabled to dispose of the fee simple in possession independently of the provisions of the Act, and shall not be a spiritual person entitled in respect of his benefice or cure, or a corporation

prevented from aliening such Rent-Charge otherwise than under the provisions of the Act, a payment or tender to the person so entitled, or to the proper officer of the corporation so entitled of the sum of money certified by the Commissioners, as aforesaid, shall be deemed a due payment of the consideration money; and in every other case the payment of the sum of money so certified, according to the provisions thereinafter contained, shall be deemed a due payment of the consideration money.—*Sec.* 7.

516. And the consideration money for the redemption under the Act of any Rent-Charge, agreed or awarded to be paid, or payable, under any apportionment to any spiritual person in respect of his benefice or cure, shall be paid to the "Governors of Queen Anne's Bounty for the augmentation of the maintenance of the poor clergy;" and such consideration money shall be applied and disposed of by the said Governors, as money in their hands, appropriated for the augmentation of such benefice or cure, should by law and under the rules of the said Governors be applied and disposed of; and the receipt of the treasurer of the said Governors shall be a sufficient discharge for such consideration money, and the person paying the same to such treasurer shall not be concerned to see to the application or disposal thereof.—*Sec.* 8.

517. And in all other cases in which the person, for the time being, entitled to any Rent-Charge, or apportioned Rent-Charge, subject to be redeemed under the provisions of the Act, shall be only entitled thereto for a limited estate, or interest therein,

or shall be under any disability, or shall be a corporation not authorized to make an absolute sale of such Rent-Charge, otherwise than under the provisions of the Act, the consideration money to be paid for the redemption thereof shall be applied in manner thereafter provided; that is to say, shall at the option of the person for the time being, entitled as aforesaid, be paid into the Bank of England, in the name and with the privity of the Accountant-General of the Court of Chancery, to be placed to his account there *ex parte* the Tithe Commissioners, pursuant to the method prescribed by any Act, for the time being, in force for regulating monies paid into the said Court, and such monies shall remain so deposited until the same be applied to some one or more of the following purposes; that is to say, in the purchase or redemption of the land-tax, or the discharge of any debt or incumbrance affecting the Rent-Charge, in respect of which such money shall have been paid, or the tithes for which the same shall have been substituted, or affecting other hereditaments settled therewith, to the same or the like uses, trusts, or purposes, or in the purchase of other lands, to be conveyed, limited, and settled upon the like uses, trusts, purposes, and in the same manner, as the Rent-Charge, for redemption of which such money shall have been paid, stood settled; or in payment to any party becoming absolutely entitled to such money; and such money may be so applied, as aforesaid, upon an order of the Court of Chancery, made on the petition of the party who would have been entitled to the receipt of the Rent-Charge, in respect

of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General in the purchase of three per centum consolidated, or three per centum reduced bank annuities, or in government or real securities, and the dividends thereof paid to the party who would, for the time being, have been entitled to the Rent-Charge, in case the same had not been redeemed, or otherwise such consideration money may be paid, at the like option of the person, for the time being, so entitled to the trustees acting under the will, conveyance, or settlement, under which such person having such limited interest shall be entitled to or interested in such Rent-Charge, or if there are no such trustees, then into the hands of trustees to be nominated under the hands and seal of the said Commissioners; and the money when so paid to such trustees, shall be applied by the said trustees, with the consent of the said Commissioners, in the manner thereinbefore directed, concerning any money to be paid for redemption into the Bank of England, in the name and with the privity of the said Accountant-General; and upon every vacancy in the office of such trustee, some other fit person shall be appointed by the said Commissioners in like manner.—*Sec.* 9.

518. Provided, that when any consideration money so to be paid, as last thereinbefore mentioned, shall not exceed the sum of twenty pounds for the redemption of all the Rent-Charge, which shall be redeemable under that Act, and shall not be payable to the Governors of Queen's Anne's Bounty, as

aforesaid, the same shall be paid, if the said Commissioners shall so direct, to the person, for the time being, entitled to the Rent-Charge, for his own use and benefit, or in case of coverture, infancy, idiotcy, lunacy, or other incapacity of the person, for the time being, entitled, then such money shall be paid for the use of the person so entitled, to the husband, guardian, committee, or trustee of such person; and in case any dispute shall arise as to the proper application, appropriation, or investment, of any money according to the intention of the Act, it shall be lawful for the said Commissioners to decide such question, and their decision shall be final and conclusive thereon.—*Sec.* 10.

519. And every owner of an estate in land less than an immediate estate, in fee simple, or fee tail, or which may be settled upon any uses, or trusts, may, with the consent of the Commissioners, or in such manner as they shall direct, charge so much of the consideration money and other monies payable in respect of the redemption of a Rent-Charge, or any part thereof, with interest, after the yearly rate of four pounds by the hundred upon the lands of such owner, which would have been subject to such Rent-Charge, or to an apportioned part thereof, but so, nevertheless, that the charge upon such land shall be lessened in every year, after the redemption of such Rent-Charge, by one-twentieth part, at least, of the whole original charge thereon.—*Sec.* 11.

520. And every certificate of the Commissioners of the redemption of a Rent-Charge under the provisions of the Act shall be under the hands and seal

of the Commissioners, and shall show the amount of the consideration money for the redemption thereof, and to whom, or in what manner the same shall have been paid; and copies of every such certificate shall be made and sealed with the seal of the Commissioners, and shall be deposited in the like custody and in like manner as by the said first recited Act is provided, concerning every confirmed instrument of Apportionment; and copies of, and extracts from, any copy of such certificate shall be furnished in like manner as copies of any copy of a confirmed Instrument of Apportionment. And every recital or statement in any such certificate, or in any sealed copy, shall be evidence of the matters therein recited.—*Sec.* 12.

SECTION VI.

Of the Alteration of the Apportionment after Inclosure of Lands.

521. Where lands now charged or hereafter to be charged with Rent-Charges or portions of Rent-Charges under confirmed Instruments of Apportionment have been, or shall be (after the confirmation of such Apportionment) inclosed or divided, allotted or exchanged, by agreement or award, made under the powers of any general or local Act of Inclosure (or otherwise) in such manner that the Apportionment shall appear to the Commissioners to be inconvenient, with reference to the altered distribution of the land among the several owners thereof, it shall

be lawful for the Commissioners upon the application of the owners of such lands, or the majority in number and value of such owners, or upon the application of the person or persons entitled to such Rent-Charges or portions of Rent-Charges, or any of them, to make or confirm an altered Instrument of Apportionment adapted to the altered distribution of the lands, in order that the Rent-Charges or portions of Rent-Charges originally charged on the several portions of land which shall have been taken or allotted away from the former owners on such inclosure, division, allotment, or exchange, shall be charged on the lands which shall have been allotted or received in the way of substitution or compensation for the lands so taken or allotted away from the former owners thereof, or as near thereto as circumstances will admit; and every such altered Apportionment, when confirmed under the hands and seal of the Commissioners, shall be valid as to the date of such confirmation, and shall be taken to be an amendment of the original Apportionment.—9 & 10 *Vic. c.* 73, *s.* 13.

522. And all the expenses of the altered Apportionment last aforesaid shall be borne by the owners of the lands to which such altered Apportionment shall relate, and shall be recovered in the same manner as expenses chargeable on the same owners in or about the making of an original Apportionment of the sum of the Rent-Charges charged on the same lands respectively would have been recoverable; and all the provisions of the said Acts in relation to such of the expenses of or incident to making

an Apportionment of a Rent-Charge as are payable by the owners of the land included therein shall extend and be applicable to the expenses of such altered Apportionment.—*Sec.* 14. 6 & 7 *W. IV. c.* 71, *s.* 75, 76. 2 & 3 *Vic. c.* 62, *s.* 18.

SECTION VII.

Of a Supplemental Apportionment in respect of the owners of the Rent-Charge.

523. Where by any agreement or award made under the provisions of the said Acts a Rent-Charge has been or shall have been agreed or awarded to be paid to any person in lieu of any Tithes, and after the Apportionment of such Rent-Charge shall have been made and confirmed under the provisions of the said Acts, it shall appear that some Tithes included in the aggregate Tithes in lieu of which such Rent-Charge shall have been so agreed or awarded to be paid, or some portion or undivided share of some Tithes so included were or was at the time of such agreement or award the property of some person other than the person to whom the said Rent-Charge was so agreed or awarded to be paid, or that the whole of the Tithes included in the aggregate in respect of which such Rent-Charge was agreed or awarded to be paid were not held by the person to whom such Rent-Charge was so agreed or awarded to be paid in the same right and for the same estate, or were not subject after the determination of the estate of such person to the same limitations or

estates legal and equitable, it shall be lawful for the Commissioners, in any of the cases aforesaid in pursuance of, or in accordance with, the decree or direction of a court of equity of competent jurisdiction, or on the request in writing of the parties who for the time being in case there had been no commutation would have been the owners of all the Tithes included in such aggregate, to make or confirm a supplemental award or Apportionment of such Rent-Charge in such manner that, without altering the aggregate amount of Rent-Charge to which any owner of land may be subject, separate Rent-Charges or separate portions of Rent-Charges may be made payable to the parties who would have been owners of the Tithes in case they had not been extinguished in lieu of the several Tithes or portions of Tithe included in such aggregate which would belong to different persons, or be held in different rights, or be subject to different limitations or estates; and by such supplemental award and Apportionment the Commissioners, if they shall so think fit, may apportion or award to be paid to one of the respective owners, or to the owner in lieu of one of his respective rights, the whole of any Rent-Charges payable under the original Instrument of Apportionment out of specific lands, instead of dividing each Rent-Charge made payable in lieu of the aggregate of the Tithes of each parcel of land between or among the owners of the separate Tithes arising out of such parcel; and such supplemental award and Apportionment when confirmed by the Commissioners under their hands and seal shall take effect, from

the half yearly day of payment which shall happen next after the confirmation thereof.— 9 & 10 *Vic. c.* 73, *s.* 15.

SECTION VIII.

Of the removal of Copy of Instrument of Apportionment.

524. Where the place of deposit of the copy of a confirmed Instrument of Apportionment which by the said Act of the session of Parliament holden in the sixth and seventh years of the reign of King William the Fourth is directed to be deposited with the incumbent and church or chapel wardens for the time being, or such other fit person as the Commissioners shall approve, shall be alleged to be inconvenient to the majority of the persons interested therein, or otherwise inconvenient or unsafe, it shall be lawful for any person interested in the lands or Rent-Charge to which such Apportionment shall relate to apply to the court of general quarter sessions of the peace for the county, riding, division or place in which such place of deposit shall be situate, for an order for the deposit of such copy in some more convenient or secure custody or place, and fourteen days' notice in writing of every such application shall be given to the persons in whose custody such copy shall at the time of such application be deposited; and it shall be lawful for the court at the quarter session for which such notice shall be given to hear and determine such application in a summary way, or they may, if they think fit, adjourn it to the following session; and upon the hearing of

such application, the court may, if they think fit, order such copy to be removed from the custody of the persons with whom the same shall have been deposited, and to be deposited with such other persons or in such other custody as the court having reference to the security and due preservation of such copy, and to the convenience of the parties interested therein, may think fit, and may make such order concerning the notice to be given of such removal and deposit, and concerning the costs of such application, or of any opposition thereto, as they may think reasonable.—9 & 10 *Vic. c.* 73, *s.* 17; and see 6 & 7 *W. IV. c.* 71, *s.* 64. *No.* 27.

SECTION IX.

Of the Correction of the Apportionment when lands improperly charged with Rent-Charge.

525. By the 10 & 11 *Vic. c.* 104, after confirming every Instrument of Apportionment confirmed by the Tithe Commissioners (see No. 43), it is enacted, That if it shall be shown to the satisfaction of the said Tithe Commissioners that any lands have been improperly included or improperly charged with Rent-Charge in any confirmed Instrument of Apportionment, it shall be lawful for the said Tithe Commissioners to correct such Apportionment, and the deposited copies thereof, either by excluding such lands so improperly charged from the Apportionment, and re-distributing any Rent-Charge imposed upon such lands on lands legally liable to the pay-

ment thereof, or by sanctioning the redemption of the Rent-Charge so improperly charged by the persons capable of redeeming the same under the provisions of an Act of the last Session of Parliament, intituled "An Act further to amend the Acts for the Commutation of Tithes in England and Wales;" and all costs and expenses attendant upon the correction of any confirmed Instrument of Apportionment shall be borne and paid by such persons and in such proportions as the said Tithe Commissioners shall direct, and shall be recoverable from the person or persons declared liable by the said Tithe Commissioners to the payment of the same in such manner as expenses attendant upon original Instruments of Apportionment are recoverable.—*Sec.* 3, 6 & 7 *W. IV. c.* 71, *s.* 75, 76. 2 & 3 *Vic. c.* 62, *s.* 18.

526. And that for the purposes of such correction, or of recording any such redemption, the person or persons having the custody of any copy of any Instrument of Apportionment shall be bound upon the application of the Tithe Commissioners to deliver to the said Tithe Commissioners any copy of a confirmed Instrument of Apportionment which shall have been deposited with them respectively.—*Sec.* 4, 6 & 7 *W. IV. c.* 71, *s.* 64.

CHAPTER XV.

OF APPORTIONMENT OF THE RENT-CHARGE, AS BETWEEN THE INCUMBENT AND HIS SUCCESSOR.

527. THE Tithe Commutation Act 6 & 7 *W. IV. c.* 71, enacts that the several provisions of an Act passed in the fourth and fifth years of his Majesty, intituled "An Act to amend an Act of the Eleventh year of King George the Second, respecting the Apportionments of Rents, Annuities, and other periodical payments," shall extend to all Rent-Charges payable under the Tithe Commutation Act.—*Sec.* 86.

528. By the Act referred to, 4 & 5 *W. IV. c.* 22, *s.* 2, it is enacted, that from and after the passing of this Act, all Rents-Service reserved on any lease by a tenant in fee, or for any life interest, or by any lease granted under any power, (and which leases shall have been granted after the passing of this Act,) and all Rents-Charge and other rents, annuities, pensions, dividends, moduses, compositions, and all other payments of every description in the United Kingdom of Great Britain and Ireland, made payable, or coming due, at fixed periods, under any instrument that shall be executed after the passing of this Act, or (being a will or testamentary instrument) that shall come into operation after the passing of this

Act, shall be apportioned so, and in such manner, that on the death of any person interested in any such rents, annuities, pensions, dividends, moduses, compositions, or other payments, as aforesaid, or in the estate, fund, office, or benefice, from or in respect of which the same shall be issuing or derived, or on the determination by any other means whatsoever of the interest of any such person, he or she, and his or her executors, administrators, or assigns, shall be entitled to a proportion of such rents, annuities, pensions, dividends, moduses, compositions, and other payments according to the time which shall have elapsed from the commencement of the last period of payment thereof respectively, (as the case may be,) including the day of the death of such person, or of the determination of his or her interest, all just allowances and deductions in respect of charges on such rents, annuities, pensions, dividends, moduses, compositions, or other payments being made.

529. And that every such person, his or her executors, administrators, and assigns, shall have such and the same remedies at law, and in equity, for recovering such apportioned parts of the said rents, annuities, pensions, dividends, moduses, compositions, and other payments, when the entire portion of which such apportioned parts shall form part, shall become due and payable, and not before, as he, she, or they would have had for recovering and obtaining such entire rents, annuities, pensions, dividends, moduses, compositions, and other payments, if entitled thereto.

530. But so that persons liable to pay rents reserved by any lease or demise, and the lands, tenements, and hereditaments comprised therein, shall not be resorted to for such apportioned parts specifically as aforesaid, but the entire rents of which such portions shall form a part, shall be received and recovered by the person or persons who, if this Act had not passed, would have been entitled to such entire rents; and such portions shall be recoverable from such person or persons by the parties entitled to the same under this Act, in any action or suit at law, or in equity.

531. It will be observed that, as to rents reserved upon lease or demise, the successor is to receive and recover the entire rent, and to account to his predecessor, or his representatives, for the proportion.

532. But the Rent-Charge comes within the category of which the apportioned parts are to be received and recovered by the predecessor or his representatives, when the entire payment shall become due, by the same remedies as he or they would have had for the entire sum; the predecessor or his representatives are therefore to apply to the occupier for his apportioned parts of the Rent-Charge, including the day of the death or resignation of such predecessor, and the same is not to be received, or accounted for, by his successor.

CHAPTER XVI.

OF COMPULSORY CONTRIBUTION TO THE RENT-CHARGE.

533. THE 5 & 6 *Vic. c.* 54, *s.* 16, (No. 112,) provides for compulsory contribution to the Rent-Charge where any land-owner or occupier shall have paid Rent-Charge on an allotment including other land with his own.

534. The statute applies to the case where the owner or his tenant shall have paid the whole of such Rent-Charge, or any portion thereof greater than his just proportion; and where contribution thereto shall have been neglected or refused to be made by the other land-owner, or his tenant, after a demand in writing.

535. The demand in writing may be served in manner pointed out in Nos. 113, 122, 123; that is, by service upon any person occupying or residing on the land, or if no person is found thereon, by affixing the same on some conspicuous place on the land.

536. In case of neglect of contribution, application is to be made to a justice of the peace for the county, or other jurisdiction in which the land is situated, by the land-owner, or his tenant, or agent; a complaint is to be made, upon which a summons is to issue, re-

quiring the owner in default, or his tenant, to appear before any two or more such justices of the peace. The complaint is not required to be in writing. The summons by this statute may be served in like manner as the demand. (No. 535.)

537. The justices, upon proof of the demand, and of service of the summons, whether the party summoned appears or not, are to examine into the merits of the complaint, and determine the just proportion of the Rent-Charge so paid, which ought to be contributed by the land-owner of such other portion of the land, and by order under their hands and seals, they are to direct the payment by him of what shall in their judgment be due and payable in respect of such liability to contribution, with the reasonable costs and charges of such proceedings, which the justices are to ascertain.

538. Thereupon the complainant may enforce payment of the amount of contribution and costs by distress and entry, as before pointed out, but with the restriction to two years' arrears.

539. By the 11 & 12 *Vic. c.* 43, an Act to facilitate the performance of the duties of justices of the peace out of sessions, in all cases where a complaint shall be made to any justice or justices of the peace upon which he or they shall have authority by law to make any order for the payment of money, it shall be lawful for such justice or justices to issue a summons directed to such person stating shortly the matter of such complaint, and requiring him to appear at a certain time and place before the same

justice or justices, or before such other justice or justices of the same county, &c., as shall then be there, to answer to the complaint; and every such summons shall be served by a constable or other peace officer, or other person to whom the same shall be delivered upon the person to whom it is so directed by delivering the same to the party personally, or by leaving the same with some person for him at his last or most usual place of abode; and the constable, peace officer, or person who shall serve the same shall attend at the hearing to depose, if necessary, to the service of the said summons.—*Sec.* 1.

540. Provided that no objection shall be taken or allowed to any complaint or summons for any alleged defect therein in substance or in form, or for any variance between such complaint or summons and the evidence, but if the party so summoned and appearing has been thereby deceived or misled, it shall be lawful for such justices upon such terms as they shall think fit to adjourn the hearing.—*Ib.*

541. If summons not obeyed and it has been duly served, the justices may proceed *ex parte*.—*Sec.* 2.

542. Witnesses may be summoned to attend on payment or tender of their expenses.—*Sec.* 7.

543. It shall not be necessary that the complaint shall be in writing unless it be required to be so by the Act of Parliament upon which such complaint shall be framed.—*Sec.* 8. See 536.

544. The complaint may be made or laid without oath; and shall be for one matter of complaint only, and not for two or more matters of complaint; and

may be made or laid by the complainant in person or by his counsel, or attorney or other person authorized in that behalf.—*Sec.* 10.

545. Every such complaint shall be heard, tried, determined and adjudged, by one or two or more justice or justices of the peace, as shall be directed by the Act of Parliament upon which such complaint shall be framed (see No. 536); and the room or place in which the justices shall hear the complaint shall be deemed an open or public court; and the party against whom the complaint is made shall be admitted to make his full answer and defence thereto, and the parties may conduct the case by counsel or attorney.—*Sec.* 12.

546. The complainant in such complaint, whatever his interest may be in the result of the same, shall be a competent witness to support such complaint, and every witness shall be examined upon oath or affirmation. (*Sec.* 15.) And the justices may award costs to the complainant, or in case of dismissal, to the defendant.—*Sec.* 18, 26.

547. *Form of Demand.*

To Mr. L. M. of , in the county of farmer.

I hereby give you notice that certain land numbered in the Apportionment of the Rent-Charge payable in lieu of Tithes under the Act for the Commutation of Tithes in England and Wales, of the parish of in the county of is by the said Apportionment charged with one amount of Rent-Charge payable to the

rector of the said parish for the time being, that is to say, the sum of £ and that two half-yearly payments of the amount of the said Rent-Charge charged on the said land numbered in the said Apportionment, according to the prices of corn as provided by the said Act, became due and payable to the Rev. he the said then being the rector of the said parish, that is to say, one half-yearly payment thereof on the 1st day of October, 1848, amounting to £ and one other half-yearly payment thereof on the 1st day of April, 1849, amounting to £ and that the said land at the several times when the said two half-yearly payments became due respectively belonged to two [or more] land-owners in several portions, that is to say, one portion thereof to you, and one other portion thereof to me, and, that I, being owner [or tenant of the owner] of a portion of the said land last-mentioned on the day of 1849, paid to the said the rector of the said parish the sum of £ being the whole of the said two half-yearly payments of Rent-Charge [or a portion of the said two half-yearly payments of Rent-Charge greater than my just proportion] charged on the said land numbered in the said Apportionment, and you being a land-owner of a portion of the said land, I demand of you contribution thereto. Dated this day of 1849.

Yours, &c.

A. B.

548. *Form of Complaint, if made in writing.* *See Nos.* 536, 543.

[County] TO WIT. } The complaint of A. B., of in the county of yeoman, made this day of

in the year of our Lord 1849, before the undersigned, one of Her Majesty's justices of the peace in and for the said county of who saith that [stating the complaint as in the form of order No. 550.]

Taken before me the day and year first above mentioned at in the county aforesaid.

J. S.

549. *Form of Summons.*

[County] TO WIT. } To L. M., [the person against whom the complaint is made] of in the county of farmer.

WHEREAS complaint hath this day been made before the undersigned, one of Her Majesty's justices of the peace in and for the said county of [or other jurisdiction in which the land is situated] for that certain land numbered in the Apportionment of the Rent-Charge payable in lieu of Tithes under the Act for the Commutation of Tithes in England and Wales, of the parish of in the county of and situated within the said jurisdiction of the said justice, is by the said Apportionment charged with one amount of Rent-Charge payable to the rector of the said parish for the time being, that is to say, the sum of £ and that two half-yearly payments of the amount of the said Rent-Charge charged on the said land numbered in the said Apportionment, according to the prices of corn as provided by the said Act, became due and payable to the Rev. he the said then being the rector of the said parish, that is to say, one half-yearly payment thereof on the 1st day of October, in the year of our Lord 1848, amounting to the sum of £ and one other half-yearly payment thereof on the 1st day of April, in the year of our Lord 1849, amounting to the

sum of £ and that the said last-mentioned land at the several times when the said two half-yearly payments became due respectively did belong to two [or more] land-owners in several portions, that is to say, one portion thereof to you, and one other portion thereof to A. B., of in the county of yeoman, and that he the said A. B., being owner [or tenant of the owner] of a portion of the said land last-mentioned did on the day of in the year of our Lord 1849, pay to the said the rector of the said parish the sum of £ being the whole of the said two half-yearly payments of Rent-Charge [or a portion of the said two half-yearly payments of Rent-Charge greater than his just proportion] charged on the said land numbered in the said Apportionment, and that the said A. B. did on the day of in the year of our Lord 1849, make demand in writing on you, you being the land-owner [or the tenant of the land-owner] of a portion of the said land, of contribution thereto by serving such demand in writing on personally, the said then being a person occupying and residing on the said land chargeable with the said Rent-Charge, and that notwithstanding such demand in writing, contribution to the said amount of Rent-Charge so paid as aforesaid, hath been refused [or neglected] to be made by you to the said A. B. These are therefore to command you in Her Majesty's name to be and appear on at o'clock in the forenoon at before such justices of the peace for the said county, as may then be there to answer to the said complaint, and to be further dealt with according to law.

Given under my hand and seal this day of in the year of our Lord 1849, at in the county aforesaid.

J. S. (L. S.)

550. *Form of Order.*

[County] TO WIT. } Be it remembered, that on the day of , in the year of our Lord 1849, complaint was made before the undersigned J. S., one of Her Majesty's justices of the peace in and for the said county of [or other jurisdiction in which the land is situated] for that certain land numbered in the Apportionment of the Rent-Charge payable in lieu of Tithes under the Act for the Commutation of Tithes in England and Wales, of the parish of in the county of and situated within the said jurisdiction of the said justice, is by the said Apportionment charged with one amount of Rent-Charge payable to the rector of the said parish for the time being, that is to say, the sum of £ ; and that two half-yearly payments of the amount of the said Rent-Charge charged on the said land numbered in the said Apportionment, according to the prices of corn as provided by the said Act, became due and payable to the Rev. he the said then being rector of the said parish, that is to say, one half-yearly payment thereof on the 1st day of October, in the year of our Lord 1848, amounting to the sum of £ and one other half-yearly payment thereof on the 1st day of April, in the year of our Lord 1849, amounting to the sum of £ and that the said last mentioned land at the several times when the said two half-yearly payments became due respectively, did belong to two [or more] landowners in several portions, that is to say, one portion thereof to L. M. of in the county of farmer, and one other portion thereof to A. B. of in the county of yeoman; and that he the said A. B., being owner [or tenant of the owner] of a portion of the said land last mentioned, did on the day

of in the year of our Lord 1849, pay to the said the rector of the said parish the sum of £ being the whole of the said two half-yearly payments of Rent-Charge [or a portion of the said two half-yearly payments of Rent-Charge greater than his just proportion] charged on the said land numbered in the said Apportionment, and that the said A. B. did on the day of in the year of our Lord 1849, make demand in writing on the said L. M., he the said L. M. being the land-owner [or the tenant of the land-owner] of a portion of the said land of contribution thereto by serving such demand in writing on personally, the said then being a person occupying and residing on the said land chargeable with the said Rent-Charge; and that notwithstanding such demand in writing, contribution to the said amount of Rent-Charge so paid as aforesaid hath been refused [or neglected] to be made by the said L. M. to the said A. B. And now, at this day, to wit, on the day of in the year of our Lord 1849, at in the said county of the parties aforesaid appeared before us two of Her Majesty's justices of the peace in and for the said county of in which the said land is situated as aforesaid [or the said A. B. appears before us two of Her Majesty's justices of the peace in and for the said county of in which the said land is situated as aforesaid, but the said L. M., although duly called, doth not appear by himself, his counsel, or attorney; and it is now satisfactorily proved to us on oath that the said L. M. hath been duly served with the summons in this behalf, which required him to be and appear here at this day before such justices of the peace for this said county as should now be here to answer the said complaint, and be further dealt with according to law]; and now having heard the

matter of the said complaint, we do determine that the just proportion of the said Rent-Charge so paid by the said A. B. as aforesaid, which ought to be contributed by the said L. M. as the land-owner of a portion of the said land numbered in the said Apportionment as aforesaid, is the sum of £ and we do adjudge the said L. M. to pay to the said A. B. the said sum of £ being what in our judgment is due and payable in respect of such liability to contribution as aforesaid, and also to pay to the said A. B. the sum of £ for his costs in this behalf.

Given under our hands and seals this day of in the year of our Lord 1849, at in the County aforesaid.

J. S. (L. S.)
T. U. (L. S.)

INDEX.

(The figures refer to the paragraphs.)

THE END.

GILBERT & RIVINGTON, Printers, St. John's Square, London.